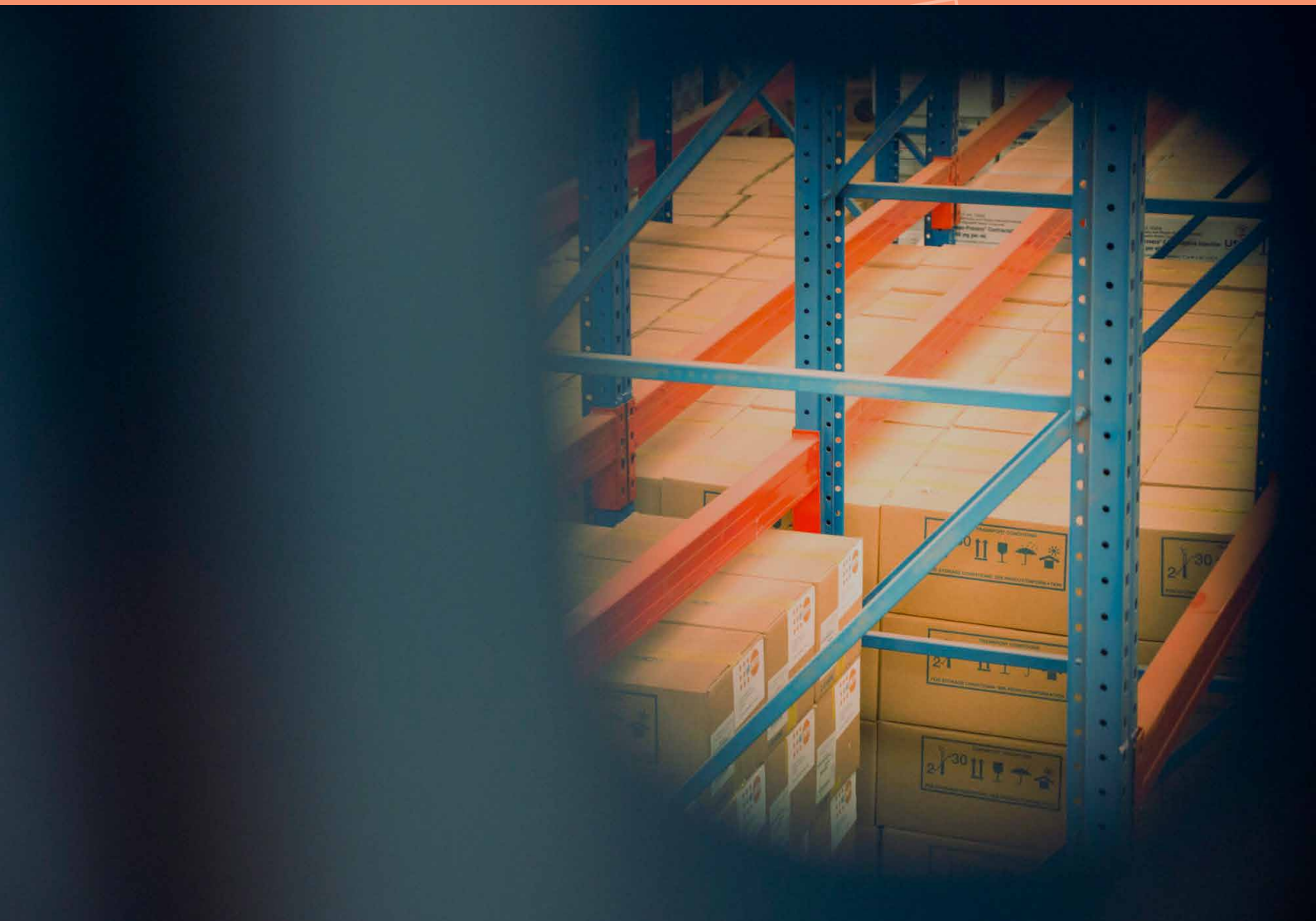


Effectiveness of Section 54 of the Modern Slavery Act

Evidence and comparative analysis

February 2021



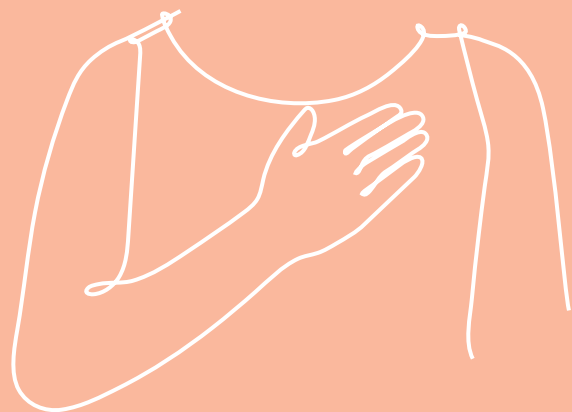
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2. Introduction

In response to persistent lobbying and concerns over the lack of corporate accountability on businesses to prevent modern slavery in their supply chains, the Government of the United Kingdom (*Government*) introduced section 54 (*section 54*) of the Modern Slavery Act 2015 (*MSA*). Section 54 requires businesses with a certain annual turnover to publish a 'slavery and human trafficking statement' (*MSA statement*) every year. This reporting requirement is designed to provide consumers and civil society organisations (*CSOs*) with the knowledge they need to hold big businesses to account for failing to take adequate steps to address modern slavery and trafficking risks in their supply chains. However, the Government's decision to use this very light-touch approach to regulation has received extensive criticism on the basis that it is unlikely to lead to meaningful changes in corporate behaviour.

Using a combination of research methods conducted by researchers at the Bonavero Institute of Human Rights (University of Oxford) and the Bingham Centre for the Rule of Law/British Institute of International and Comparative Law (BIICL), this study for the Modern Slavery and Human Rights Policy and Evidence Centre makes an important contribution to the debates around the effectiveness of section 54 and its accountability mechanisms.

First, prior to substantively analysing the provision, this report outlines section 54 in detail, including its legislative history and how the Government expressly intended civil society to be the primary accountability and monitoring mechanism for enforcing compliance (Part 4).

Second, this report fills a significant lacuna in existing analysis around what 'effectiveness' and 'accountability' mean to CSOs, as the primary enforcers of corporate accountability under section 54 (Part 5). It shows that 'effectiveness', 'monitoring' and 'accountability' are closely linked, but given a range of different meanings by stakeholders, many of whom refer to related terms (such as 'ineffectiveness') or external standards. Further, this part of the report discusses the relationship between effectiveness, accountability and monitoring, and suggests that a more substantive, gradual approach to the enforcement of section 54 would be appropriate.

Third, by comparing regulatory models for corporate accountability, this report highlights that section 54 is unique in currently relying exclusively on pressure from CSOs for its effectiveness, problematically deflecting (in practice) any burden on the Government to exercise enforcement or oversight over companies (Part 6).

Fourth, through two 'deep dive' case studies, this report offers a detailed analysis revealing that the MSA statements of some companies increase in length and sophistication over time (Part 7). However, they are not necessarily engaging with modern slavery risks in a thorough and meaningful way, or acknowledging the contribution that their price-driven commercial models make towards increasing the risk of modern slavery in supply chains. Despite being compliant with section 54, these shortcomings in MSA statements have a negative impact on the overall effectiveness of the provision and the ability of CSOs to monitor and hold businesses accountable.

Finally, this report concludes with a broad set of recommendations tailored to key stakeholders, including government and lawmakers, businesses, CSOs and investors (Part 8). With regard to the issues of 'effectiveness' and 'accountability' raised in previous sections, these recommendations are designed to facilitate a more substantive, gradual approach to the enforcement of section 54 of the MSA. An overarching and important theme of this report is that although CSOs are the primary enforcers and monitors of section 54 compliance, they were not, and are not, adequately equipped by the provision to effectively undertake that mammoth regulatory task (which is generally performed by the Government in other jurisdictions and areas of law). Thus, it is recommended in Part 8 that strong and robust state-driven intervention and enforcement mechanisms should be introduced to increase the degree to which business are held accountable under section 54 of the MSA, which, in turn, would significantly increase the effectiveness of the provision.

3. Methodology

3.1. Civil society organisation reports

The starting point for our empirical work began with the review of 24 free and publicly available CSO reports, which contain narrative-based evaluations of MSA statements. We used an expansive definition of CSOs, including NGOs, journalists, academics and some private consultancies, and took a non-exhaustive sample from each category. A full list of CSO reports we have reviewed can be found in the Appendi. To ensure that all relevant reports were identified, we carried out index and press searches. However, the review was not designed to be comprehensive; rather, it was intended to capture a snapshot of CSOs' efforts to date.

We excluded benchmark type assessments such as the Corporate Human Rights Benchmark⁶ and Know the Chain.⁷ Despite the comprehensive nature and widespread coverage of benchmark reports, they tend to focus on broader human rights concerns and lack issue-specific details on modern slavery and the application of the MSA. Subscription-only services were also excluded from this stage of the study. We did not find press reports with any independent analysis of MSA statements.⁸ Beyond the reports we identified, most press releases were limited to replicating and highlighting information contained in the identified reports.

The review was conducted manually by two reviewers working in tandem to minimise discrepancies in judgment. Reviewers used qualitative research methods to identify and code relevant passages. The coding guide evolved during the course of the review, which meant that the exercise was iterative to some extent. The coding guide was used to identify similarities in language, sample size, industry and scope.

3.2. Comparison of regulatory models

This part compares section 54 with regulatory and enforcement models in the following seven areas of regulation: i) gender pay gap reporting requirements; ii) product liability and consumer protection; iii) directors' duty and company law; iv) anti-bribery and corruption; v) health and safety regulation; vi) environmental law; and vii) mandatory human rights due diligence regulation. The methodology consisted of desktop and legal research and analysis. These regulatory models were selected because they regulate the conduct of companies. All the regulatory models studied (apart from section 54 of the MSA) provide for some role for the state in overseeing, enforcing and implementing the requirements. This role ranges from 'mild' quasi-administrative functions, to investigations and criminal sanctions, such as imprisonment of individuals found guilty of corruption. These interventionist mechanisms play an important role in holding corporations accountable and achieving effectiveness across the spectrum, which contrast with the section 54 model relying exclusively on pressure from civil society for its effectiveness.

6. Corporate Human Rights Benchmark (2020) <<https://www.corporatebenchmark.org/>> accessed 14 January 2021.

7. KnowtheChain 'Benchmark, 2020/2021' (2020) <<https://knowthechain.org/benchmark/>> accessed 12 January 2021.

8. However, it should be noted that there are numerous in-depth investigative reports on modern slavery by the likes of Humanity United and Walk Free Foundation, which have been produced or published in partnership with media outlets such as the Guardian or BBC. For a future project, these reports should be included to take into account a broader range of enforcement 'interventions'.

3.3. Deep dive

This part of the study complements the empirical analysis by delving deeply into how two specific companies, Babcock International Group plc and Arcadia Group Ltd, have changed their response to section 54 over time in light of civil society engagement and pressure. A basic case study method ‘aims to generate intensive examination of a case’,⁹ which provides the researcher with an opportunity to deep dive into the complexity and particular nature of the case.¹⁰ To this end, this research utilises a close reading of the two companies’ statements, interpreted in the light of the companies’ specific industrial context, as case studies to assess the extent to which they effectively foster corporate accountability under section 54. Importantly, the case studies also inform further questions which need to be examined in assessing the impact and value of the MSA.

3.3.1. Case Selection

The two companies chosen for analysis were selected by a logic that matches the ideas of ‘individualising’ and ‘variation finding’.¹¹ The cases share some fundamental similarities (UK-based companies with large turnovers, many thousands of employees, both with somewhat declining fortunes in the past 10 years).¹² However, the companies provide many interesting contrasts: Arcadia is a high-profile, consumer-facing private company; Babcock is a little-known publicly listed company with mainly Government customers (see Table One). This selection means that when similarities between the cases are identified, it is possible to discount explanations that hinge on features only exhibited by one of the cases; and, where there are differences, these cannot be explained with reference to features the cases share.¹³

	Babcock	Arcadia
Business Model	Business to Business and Business to Government	Business to Consumers
Ownership	Public	Private
Visibility	Obscure	Famous
Employees	35,000	17,500
Turnover	£5bn	£1.8bn

Table One: Basic Comparison between the companies

9. Alan Bryman, *Social Research Methods* (Oxford University Press, 2004) 52.

10. Ibid 48.

11. Chris Pickvance, ‘The Four Varieties of Comparative Analysis: The Case of Environmental Regulation’ (National Centre for Research Methods and ESRC Symposium on Small and Large-N Comparative Solutions, 22-23 September 2005) <<http://eprints.ncrm.ac.uk/57/>> accessed 4 January 2020; Charles Tilly, *Big Structures, Large Processes, Huge Comparisons* (Russell Sage Foundation 1984).

12. During the course of this analysis, Arcadia entered administration – it is unclear whether it will survive as an entity.

13. Theodore W. Meckstroth, ‘“Most Different Systems” and “Most Similar Systems”: A Study in the Logic of Comparative Inquiry’ (1975) 8(2) CPS 132-157.

Although a much lower-profile company, Babcock International received a (rare) approbation in the mainstream press for its performance with respect to MSA reporting, and has subsequently made changes to its approach. In contrast, Arcadia has received extensive media coverage relating to its relationships with suppliers and the working conditions in its supply base. Although the company has generated exemplary MSA statements, it is not clear the extent to which these enhance or deflect the possibility of CSO engagement.

These cases allow a more textured look at a complex process. Understanding the nuances of how Arcadia's and Babcock's statements have changed, and weighting these statements against other evidence, provides greater insight into how civil society mechanisms have failed to hold companies to account.

4. The Modern Slavery Act and section 54

4.1. Summary

- Section 54 of the MSA requires commercial organisations operating in the UK, with an annual turnover of more than £36 million, to publish annual statements disclosing what steps, if any, they have taken to prevent modern slavery in their supply chains.
- With extensive consultative input from stakeholders, the Government considered various legislative models for tackling modern slavery in supply chains, but ultimately prioritised reducing the regulatory burden on businesses when designing section 54.
- Section 54's primary accountability mechanism is the requirement that MSA statements must be disclosed and publicly accessible. The Government proposed that this would empower the public and CSOs to exert pressure on businesses not complying with the provision, or not taking steps to tackle modern slavery.
- Published in 2019, the Independent Review indicated that civil society monitoring taking place in connection with section 54 was limited in its effectiveness as an enforcement mechanism. The Independent Review therefore recommended that section 54 be more prescriptive as to what must be included in MSA statements, and that the Government should implement a more substantive, graduated approach to enforcement.
- In September 2020, the Government committed to a number of reforms following the Independent Review, including creating a central registry for modern slavery statements and mandating that MSA statements cover key reporting areas. It also indicated that it would consider options for the enforcement of section 54, in line with the development of a Single Enforcement Body for employment rights. An update will be issued 'in due course'.



4.2 Introduction

It is estimated that approximately 40.3 million people around the world live and work in conditions of 'modern slavery', including 24.9 million in forced labour and 15.4 million in forced marriage.¹⁴

Modern slavery is defined in the MSA as 'slavery, servitude and forced or compulsory labour and human trafficking'. More broadly, modern slavery is considered to be 'a brutal form of organised crime in which people are treated as commodities and exploited for criminal gain', and may 'take a number of forms, including sexual exploitation, forced labour and domestic servitude'.¹⁵ In an attempt to address the role that businesses and their supply chains may play in perpetrating the occurrence of modern slavery, the Government enacted the MSA, containing seven parts. Part 1 addresses slavery and human trafficking offences, Part 2 sets out civil prevention orders, Part 3 deals with maritime enforcement, Part 4 establishes the Office of the Independent Anti-Slavery Commissioner, Part 5 focusses on protection for those who have experienced these abuses and Part 7 encompasses miscellaneous matters. The remaining Part 6 includes only one section, section 54, entitled 'Transparency in Supply Chains etc.'.

Importantly, the Government's definition of modern slavery focusses on, and is delineated by, criminal offences that are prosecutable by the state.¹⁶ However, in the civil society context, 'modern slavery' tends to be used as an umbrella term encompassing a spectrum of economic exploitation, highlighting problematic features of commercial activities, such as fragmented international supply chains. Thus, the civil society understanding of the modern slavery concept is less imbued with criminal law connotations than that of the Government, although it still touches on the same fundamental legal issues as the Government definition.¹⁷

The overarching aim of this report is to provide initial findings on the 'effectiveness' of section 54 using empirical and comparative methods. The remainder of Part 4 discusses the statutory elements and legislative history of section 54, to establish the textual and contextual background within which CSOs seek to hold companies accountable for complying with their modern slavery reporting obligations (the provision's primary enforcement mechanism). Part 5 then begins a process of critical examination, carried on throughout this report, with respect to the CSO oversight model introduced in Part 4. It first explores the relationship between accountability, monitoring and effectiveness by drawing on theory and empirical evidence. A three-tiered spectrum of effectiveness is then proposed, providing a framework within which the section 54 enforcement model, and alternative enforcement models, are analysed and compared in Part 6. This comparative process in Part 6 highlights the distinctiveness of section 54 as a regulatory model, given its reliance on civil society pressure and lack of state-based enforcement. Part 7 then undertakes a deep dive case study using MSA statements from two companies, Babcock International and Arcadia. It provides a range of empirical insights, including that companies' MSA statements need to be understood against the widely varying corporate contexts in which companies operate, to be properly evaluated and appropriately criticised. Finally, Part 8 of this reports asserts many recommendations for key stakeholders, advocating for increased state-led monitoring and accountability interventions to improve the effectiveness of section 54.

14. e.g. Office for National Statistics, 'Modern Slavery in the UK: March 2020' (2020) <<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/modernslaveryintheuk/march2020#:~:text=Modern%20slavery%20is%20a%20serious,exploited%20for%20someone%20else's%20gain.&text=there%20were%205%2C144%20modern%20slavery,51%25%20from%20the%20previous%20year>> accessed 4 January 2020.

15. Explanatory Notes to the Modern Slavery Act 2015, para 4. This is a different definition than the one used to generate the Global Slavery Index (n 13).

16. See e.g., the typology of offences in Cooper et al, UK Home Office, 'A Typology of Modern Slavery Offences in the UK' (Research Report 93, October 2017).

17. Indeed, discussions of punishable offences are largely absent from CSO reports, as highlighted by our empirical review of CSO reports on section 54.

4.3. Section 54

Section 54 requires commercial organisations operating in the UK, regardless of their place of incorporation, with an annual turnover of more than £36 million a year, to publish annual statements disclosing the steps they have taken to prevent modern slavery in their supply chains or to state that the organisation has taken no such steps. To comply with the law, commercial organisations must meet three requirements: (i) the board must approve the MSA statements; (ii) the statements must be signed by a senior director in the business; and (iii) they must be made publicly available either online via a prominent link on the company's homepage or in writing if the company does not have a website.

As stated in the explanatory notes, the purpose of section 54 is to provide an indication as to what a business *could* include in its MSA statements, rather than prescribing what *must* be included. To this end, the section outlines six recommended areas for potential inclusion: (1) organisational structure and supply chain, including the organisation's relationship with suppliers and the countries it sources goods and service from; (2) descriptions of organisational policies designed to prevent modern slavery; (3) the organisation's due diligence processes, impact assessments and evidence of any stakeholder agreement; (4) processes for assessing and managing risk, which can be specific to country, sector, particular types of transactions, and business partnerships; (5) performance indicators on preventing modern slavery; and (6) training conducted or proposed.

The Home Office provided further guidance on the reporting requirements under section 54 in 2017 (*the 2017 guidance*),¹⁸ and later updated this guidance in April 2020 (*the 2020 guidance*).¹⁹ Both the 2017 guidance and 2020 guidance elaborate on the elements of the reporting requirement in section 54 and supplement the section with practical examples and suggestions for businesses drafting MSA statements.²⁰ Although not explicitly mentioned in the MSA, the 2017 guidance clarifies that section 54 applies to an organisation's global impacts through its network of supply chains, including all adverse impacts which the company 'causes', 'contributes to' or to which it is 'directly linked'.²¹ The 2020 guidance also refers to undertaking ongoing due diligence (with reference to the UN Guiding Principles on Business and Human Rights (*UNGPs*))²² as well as action plans. However, ultimately, section 54 itself does not require companies to take a forward-looking or proactive approach towards its supply chains.

Notably, the 2020 guidance clarifies that compliance with the section 54 reporting requirement does not require a company to guarantee that its supply chains and products are free of slavery.²³ Instead, as highlighted in the 2017 guidance, a company will only fail to comply with the requirement where it has not produced and published a statement on its website (if it has one) or has not set out the steps it has taken in the relevant financial year. It is sufficient for a company to disclose that it has taken no steps or is just beginning investigations.²⁴

18. Home Office, Transparency in Supply Chains etc. A Practical Guide (2017) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/649906/Transparency_in_Supply_Chains_A_Practical_Guide_2017.pdf> accessed 4 January 2020.

19. Home Office, Transparency in Supply Chains: A Practical Guide (updated April 2020) <<https://www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide/transparency-in-supply-chains-a-practical-guide>> accessed 4 January 2020.

20. Freshfields Bruckhaus Deringer, 'Section 54 of the Modern Slavery Act – Transparency in Supply Chains' (25 October 2015) <http://knowledge.freshfields.com/en/Global/r/1314/section_54_of_the_modern_slavery_act...transparency_in>.

21. These definitions are drawn from the UN Guiding Principles on Business and Human Rights, as referred to in the 2020 guidance.

22. United Nations Human Rights Office of the High Commissioner, *The UN Guiding Principles on Business and Human Rights* (2011) <https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf> accessed on 12 January 2021.

23. *2020 guidance* (n 18) at 5.

24. Modern Slavery Act 2015 s 54(4)(b).

If a company does fail to comply, the Secretary of State may bring civil proceedings in the High Court for an injunction requiring it to do so. However, to date, no such civil proceedings have been instituted by the Secretary of State for any alleged failure to comply with section 54. As explored further below, this is likely because section 54 is not monitored or assessed by the Home Office or any other state-based oversight body for compliance. Rather, the Government expressly intended for civil society to be the primary bodies applying pressure and holding commercial organisations to account for failure to comply with section 54.²⁵

25. See e.g. statement of Karen Bradley, Parliamentary Under-Secretary of State for the Home Department in HC Deb 4 November 2014, vol 587, col 704 <<https://hansard.parliament.uk/Commons/2014-11-04/debates/14110444000002/ModernSlaveryBill>> accessed 4 January 2021.

4.4. Legislative history on section 54

4.4.1. Parliamentary process – designing a civil society accountability mechanism

The Joint Committee on the Modern Slavery Bill was appointed by the House of Commons on 9 January 2014 and by the House of Lords on 15 January 2014 to examine the Draft Modern Slavery Bill and report to both Houses by 10 April 2014. The Joint Committee consulted extensively with businesses throughout the legislative process, and was told that ‘the purely voluntary approach has not been effective at eliminating modern slavery’.²⁶ Both CSOs and businesses agreed that stronger legislative measures were necessary, since the purely voluntary approach towards corporate social responsibility had proved to be ineffective, and was creating an environment whereby unscrupulous and ignorant competitors were undercutting more ethical businesses.²⁷ Thus, to level the playing field, there was a clear mood for change. The focus became what form and degree of intervention the new legislation should adopt.

Although many big businesses (e.g., Amazon, IKEA, Marks & Spencer, etc.) supported change, they resisted overly burdensome legislation.²⁸ With this in mind, the Joint Committee considered three models:

1. **The ‘Bribery Act model’** – this model would require companies to carry out risk-based due diligence across their own supply chains. The Bribery Act 2010 was lauded for creating a positive shift in corporate culture. However, in the MSA consultation, some businesses thought having to carry out actual due diligence on supply chains would be ‘very burdensome’,²⁹ without delivering any additional results,³⁰ particularly for businesses with many thousands or even millions of suppliers.
2. **The stand-alone legislation model** – this model would be similar to the California Transparency in Supply Chains Act 2010, which requires companies to disclose their efforts to eradicate modern slavery. The Californian statute appeared to have increased awareness of modern slavery issues among US consumers, investors and companies. The Joint Committee found this proposal to be more popular than the ‘Bribery Act model’,³¹ including among large retailers like Tesco and Primark, who were open to adopting new reporting processes.
3. **Amending section 414C (7) of the Companies Act 2006 to include the modern slavery model** – under section 414C(7), companies are required to report on ‘social, community and human rights issues’ in a strategic report every financial year, or explain why they are not doing so. The Joint Committee said this approach was consistent with the Government’s desire not to impose additional burdens on businesses already tackling modern slavery, and ultimately recommended this approach as a ‘proportionate and industry-supported initial step’.³²

26. The Joint Committee on the Draft Modern Slavery Bill, ‘Report on the Draft Modern Slavery Bill’ (3 April 2014) [169] <<https://publications.parliament.uk/pa/jt201314/jtselect/jtselect/jtselect/166/16608.htm>> accessed on 12 January 2021.

27. Ibid 86.

28. Ibid 87.

29. Ibid.

30. Ibid.

31. Ibid.

32. Ibid 113.

However, when the Modern Slavery Bill was presented in the House of Commons on 10 June 2014 for its first reading and again on 8 July 2014 for its second reading, the Bill did not include a 'transparency in supply chains' provision; nor was the proposal to amend section 414C(7) of the Companies Act 2006 tabled in accordance with the Joint Committee's recommendations.

The Home Secretary at the time, Theresa May, responded to concerns about the omission, confirming that the Government had 'not ignored the issue'³³ and was again consulting business on the matter. Meanwhile, the Public Bills Committee criticised the omission and called on the Government to be more ambitious. Under pressure, Karen Bradley (Parliamentary Under-Secretary of State for the Home Office) announced on 14 October 2014 that a stand-alone measure would be introduced. The section 414C(7) model would not be adopted, as the Government sought to include all companies over a certain size rather than just publicly listed companies.³⁴ Subsequently, a number of iterations were presented, and the new 'Transparency in Supply Chains etc.' provision was introduced to the House of Commons on 4 November 2014.

Notably, the Government did not address how companies would be held to account under section 54 during the legislative process, although previous Parliamentary discussions on the issues made it clear that civil society was intended to be a major source of accountability.³⁵ Eventually, Karen Bradley stated:³⁶

The Government believe it is for civil society to put pressure on businesses that are not doing enough to eliminate modern slavery from their supply chains. The Government's new clause makes this as easy as possible by ensuring that disclosures are easily accessible. The link to disclosure must be in a prominent place on a business's website home page.

The 2020 guidance confirmed the Government's commitment to this approach, adding consumers, investors and NGOs to the accountability framework.³⁷ It has been asserted that this approach will lead to commercial organisations competing in a 'race to the top',³⁸ causing a trickle down of increased standards and creating a 'level playing field'³⁹ between commercial organisations.

The Government's exclusive reliance on monitoring and pressure by civil society is highly unusual in the realm of the regulation of corporate externalities. Nevertheless, the outcome of the consultation and legislative process is that the primary mechanism of accountability is to require commercial organisations to publish MSA statements in a publicly accessible format, which exposes commercial organisations to public scrutiny. There is clear expectation that the provision would function with minimal state intervention.

33. Deputy Prime Minister Oral Answers to Questions HC Deb 8 July 2014, cols 169-170 <<https://publications.parliament.uk/pa/cm201415/cmhansrd/cm140708/debtext/140708-0001.htm#14070874000001>> accessed 3 January 2021.

34. Modern Slavery Bill Deb 14 October 2014, col 494 <<https://publications.parliament.uk/pa/cm201415/cmpublic/modernslavery/141014/pm/141014s01.htm>> accessed 3 January 2021.

35. See e.g. HC Deb 4 November 2014, vol 587, col 690 <<https://hansard.parliament.uk/Commons/2014-11-04/debates/14110444000002/ModernSlaveryBill#contribution-14110444000258>> accessed 3 January 2021; HC Deb 4 November 2014, vol 587, col 694 <<https://hansard.parliament.uk/Commons/2014-11-04/debates/14110444000002/ModernSlaveryBill#contribution-14110460000076>> accessed 3 January 2021.

36. HC Deb 4 November 2014, vol 587, col 704 <<https://hansard.parliament.uk/Commons/2014-11-04/debates/14110444000002/ModernSlaveryBill>> accessed 4 January 2021.

37. 2020 guidance (n 18) at 6.

38. Draft Modern Slavery Act 2015 (Transparency in supply chains) Regulations 2015 Deb 19 October 2015, col 1 <[https://hansard.parliament.uk/Commons/2015-10-19/debates/7f70eb14-c64f-48b1-b6e5-64312b1c7813/DraftModernSlaveryAct2015\(TransparencyInSupplyChains\)Regulations2015](https://hansard.parliament.uk/Commons/2015-10-19/debates/7f70eb14-c64f-48b1-b6e5-64312b1c7813/DraftModernSlaveryAct2015(TransparencyInSupplyChains)Regulations2015)> accessed 3 January 2021.

39. HC Deb 4 November 2014, vol 587, col 688 <<https://hansard.parliament.uk/Commons/2014-11-04/debates/14110444000002/ModernSlaveryBill>> accessed 3 January 2021.

4.4.2. Implementation – the civil society accountability mechanism in practice

Once the MSA came into force, a number of civil society initiatives were launched. As a starting point, the Modern Slavery Statement Registry (www.modernslaveryregistry.org) was established as a civil society monitoring platform. It was set up and managed by the Business and Human Rights Resource Centre, which is an active global information hub for resources and guidance on business and human rights issues. Currently, and until the newly announced Government repository is set up, it is the only free and up-to-date repository for MSA statements.

As MSA statements were published and became accessible, civil society bodies began to think about ‘accountability’. Many drew on the notion of accountability embodied in external sources, such as the UNGPs. Notably, the UNGPs introduce the concept of ‘human rights due diligence’ (HRDD), describing it as: ‘an ongoing risk management process... to identify, prevent, mitigate and account for how [a company] addresses its adverse human rights impacts.’⁴⁰

As an alternative, the CORE Coalition, a UK CSO working on corporate accountability, treated modern slavery risks as a quality control issue. They suggested that suppliers and subcontractors should be held accountable, and that products should be considered defective if slavery or human trafficking is identified in the production process.⁴¹ Taking a different focus, the ‘FTSE 100 & the UK Modern Slavery Act: From Disclosure to Action’ report considered that approval and a signature from the board or equivalent leadership body was a key accountability mechanism, as it demanded buy-in from senior members of the organisation.⁴²

4.4.3. Reviewing the civil society accountability mechanism

In July 2018, the Government commissioned Frank Field MP, Maria Miller MP and Baroness Butler-Sloss to undertake an independent review of the MSA. The aims of the review were: (i) to report on the MSA’s operation and effectiveness; and (ii) to understand how it is operating in practice, how effective it is, and whether it is fit for purpose now and in the future.⁴³

The final review report was submitted to the Home Secretary on 29 March 2019 and laid in Parliament on 22 May 2019 (*Independent Review*).⁴⁴ With respect to section 54, three areas of recommendations in the Independent Review are particularly significant for this study: (1) those that relate to the application of the law; (2) those that envision some oversight or enforcement role for the Government; and (3) those relating to public procurement requirements.

First, with respect to the application of the law, the Independent Review recommended that the MSA should no longer allow companies ‘to state they have taken no steps to address modern slavery in their supply chains’ and that ‘the six areas of reporting currently recommended in guidance should be made mandatory’.⁴⁵ Moreover, it recommended that the Companies Act 2006 ‘should be amended to include a requirement for companies to refer to their modern slavery statement in their annual reports’ and that failure to report ‘or to act when instances of slavery are found should be an offence under the Company Directors Disqualification Act 1986’.⁴⁶

40. UNGPs (n 21) 17.

41. CORE Coalition, ‘Beyond Compliance: Effective Reporting under the Modern Slavery Act’ (2016) 7 <https://corporate-responsibility.org/wp-content/uploads/2016/03/CSO_TISC_guidance_final_digitalversion_16.03.16.pdf> accessed on 2 January 2021.

42. Business & Human Rights Resource Centre, ‘FTSE 100 & the UK Modern Slavery Act: From Disclosure to Action’ (2018) 14, 23.

43. Independent Review of the Modern Slavery Act 2015: Final report (22 May 2019) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf> accessed 3 January 2021.

44. Ibid.

45. Ibid para 17.

46. Ibid para 18.

Second, the Independent Review recommended that the Government adopt more substantive enforcement steps, in contrast to the established approach relying entirely on CSOs, the public and investors for accountability. The recommended steps listed range from fairly modest ones, such as setting up a central repository for statements, to more proactive steps, such as active monitoring by the Independent Anti-Slavery Commissioner. It recommended more robust enforcement, including sanctions for non-compliance and the establishment of an enforcement body.⁴⁷ To this end, Recommendation 30 is particularly notable:⁴⁸

The Government should make the necessary legislative provisions to strengthen its approach to tackling non-compliance [with section 54 of the Act], adopting a gradual approach: initial warnings, fines (as a percentage of turnover), court summons and directors' disqualification. Sanctions should be introduced gradually over the next few years so as to give companies time to adapt to changes in the legislative requirements.

Third, the Independent Review recommended that 'Government should extend section 54 requirements to the public sector and strengthen its public procurement processes'.

Following these Independent Review recommendations, the Government initiated a consultation on the MSA and responded to these recommendations in July 2019.⁴⁹ In September 2020, the Government announced its commitment to several changes, including: (i) creating mandatory reporting areas; (ii) mandating organisations captured by section 54 of the Modern Slavery Act 2015 to publish their statement on the Government-run reporting service; (iii) introducing a single reporting deadline; (iv) amending legislation to make the current requirements on statement sign-off and group statements clearer; and (v) extending the provision to public bodies, using the budget threshold of £36 million.⁵⁰ Additionally, the Government sought views on sanctions for non-compliance and extended state enforcement, noting that it will consider enforcement options, including the development of the Single Enforcement Body empowered to impose civil penalties, in due course.⁵¹

The September 2020 commitments and the Foreign Secretary's January 2021 announcement to introduce financial penalties for non-compliance with section 54,⁵² which the Government will seek to implement as soon as Parliamentary time allows, are perceived by many businesses as 'strengthening' the MSA. Indeed, the Government's intended plans may increase the effectiveness of section 54, by increasing the extent to which businesses are held accountable for their MSA statements. To this end, particularly notable are the commitments to create a central registry for modern slavery statements and to mandate that MSA statements cover key reporting areas. Nevertheless, there are still a range of barriers to effective monitoring and enforcement under section 54. Part 8 of this report proposes that closing these gaps through more robust state-led monitoring should be the focus of future reform.

47. Ibid para 17.

48. Ibid Recommendation 30.

49. HM Government, *UK Government Response to the Independent Review of the Modern Slavery Act 2015* (2019) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/815410/Government_Response_to_Independent_Review_of_MS_Act.pdf> accessed 20 December 2020.

50. Home Office and Victoria Atkins MP, 'New tough measures to tackle modern slavery in supply chains' (*Gov.uk*, 22 September 2020) <<https://www.gov.uk/government/news/new-tough-measures-to-tackle-modern-slavery-in-supply-chains>> accessed 3 January 2021.

51. Home Office, *Transparency in Supply Chains Consultation: Government Response* (2020) 14 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf> accessed on 14 January 2021.

52. Foreign, Commonwealth & Development Office, Home Office, Department for International Trade, 'Press Release: UK Government Announces Business Measures Over Xinjiang Human Rights Abuses' (*Gov.uk*, 12 January 2021) <<https://www.gov.uk/government/news/uk-government-announces-business-measures-over-xinjiang-human-rights-abuses>> accessed on 14 January 2021.

5. Effectiveness: theory and practice

5.1. Summary

- Section 54 employs a range of non-legal accountability mechanisms, including civil society monitoring, market-based oversight and senior-level buy-in, which do not involve government intervention. Thus, it can be said that section 54 employs a broader set of mechanisms than other purely legal enforcement models, such as those discussed in Part 6.
- As CSOs are the main enforcers of section 54, it is important for legislators, researchers and stakeholders to consider and evaluate the extent to which civil society oversight has been effective in holding companies accountable for complying with their obligations under section 54.
- 'Effectiveness' is imprecise and a difficult concept to define in practice. However, CSOs have constructed the meaning of effectiveness with regard to the means and mechanisms by which it can be achieved, such as accountability and monitoring, as well as external standards and developments, such as statutes enacted after the MSA (e.g. the Australian Modern Slavery Act 2018). For CSOs, monitoring includes both the monitoring by companies of their own supply chains, as well as the monitoring by CSOs of MSA statements.
- CSOs tend to use criteria on a definitional spectrum to measure 'effectiveness', including the effectiveness of the law to: (1) achieve compliance with the express requirements of the law (category 1); (2) bring about changes in corporate behaviour (category 2); and (3) prevent the unwanted outcome, being the continued occurrence of modern slavery in business supply chains (category 3).
- Monitoring is an important means to establishing accountability, yet the role of monitoring compliance with section 54 has been left to CSOs. The Independent Review has recommended that the Government takes increased substantive steps towards enforcement of section 54 (a 'gradual approach' to enforcement). A more substantive, gradual approach to enforcement, including monitoring, would likely increase the effectiveness of section 54.



Section 54 was designed to harness the powers of civil society oversight to put pressure on businesses to take action on modern slavery, and consequently, CSOs have become the main enforcers of section 54. Thus, to assess the effectiveness of section 54, it is necessary to consider the effects and impact of civil society oversight of MSA statements to date. The critical question is whether this oversight and monitoring has been effective in holding companies accountable to their obligations under section 54.⁵³ Exploring the relationship between accountability, monitoring and effectiveness in the section 54 context is therefore an important theme of this research.

5.2. Theory on effectiveness

5.2.1. Effectiveness and accountability

Broadly speaking, accountability is the 'relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences'.⁵⁴ In the regulatory context, accountability often refers to democratic accountability or legal accountability to the courts. However, it can also be defined more loosely as the fact or condition of being accountable, or being held responsible for acting in accordance with certain qualitative values, such as openness, consistency, proportionality, and procedural fairness. In regulatory governance, observance of accountability mechanisms, human rights and fundamental legal principles in public regulations is particularly important.⁵⁵

However, qualitative values, such as openness, consistency etc., are difficult to measure and assess empirically. A significant obstacle is the lack of a common understanding as to what accountability means on a theoretical level and entails in a practical context. Problematically, there is a lack of relevant data on accountability practices and rules. However, a useful solution is to think of accountability 'as a mechanism' towards effectiveness,⁵⁶ assessing the degree of 'answerability' and 'enforceability'⁵⁷ of accountability tools such as reporting, citizens' oversight and other output-based mechanisms.⁵⁸

53. Also see Part 7 deep dive case studies.

54. Mark Bovens, 'Analysing and Assessing Accountability: A Conceptual Framework' (2007) 13(4) ELJ 450.

55. Christine Parker and John Braithwaite, *The Oxford Handbook of Legal Studies* (OUP Oxford, 2012) 139.

56. Jacint Jordana, Andrea C. Bianculli and Xavier Fernández-i-Marín, *Accountability and Regulatory Governance: Audiences, Controls and Responsibilities in the Politics of Regulation* (Palgrave Macmillan 2015).

57. E.E. Akpannuko and I. E. Asogwa, 'Accountability: A Synthesis' [2011] 2 IJFA 164-173.

58. Giandomenico Majone, 'The Regulatory State and Its Legitimacy Problems' (1999) 22 WEP 1, 1.

5.2.2. Monitoring and effectiveness

Monitoring is the means to establishing accountability, which in turn, provides the measure for effectiveness. Monitoring techniques which lead to accountability have long been part of the study of regulations. ‘Responsive regulation’ theory, in particular, hinges on monitoring as a necessary process for improving law to ‘respond’ to the ever-changing regulatory landscape.

Responsive regulation theory is an approach to regulation, which seeks to try one strategy after another that might build on the strengths like a pyramid.⁵⁹ It suggests that regulators should move up a pyramid of ‘support’ that allows their strengths to expand to solve more and more issues of concern (essentially, a form of governance through self-regulation). When that fails to adequately solve specific problems, the regulator can move to a pyramid of ‘sanctions’, which has the most restorative sanctions (e.g. dialogue, civil society pressure) at the bottom of the pyramid, deterrence techniques in the middle, and then punitive sanctions at the peak of the pyramid. The idea is that the regulator should only escalate to more punitive approaches reluctantly and only when dialogue fails.⁶⁰

Responsive regulation asks regulators not to be dogmatic about any theory. The key is to be attentive, and responsive, to context. Responsiveness is about flexible choice among a range of sanctions arrayed in a pyramid. In the responsive regulation literature, the basic idea of pyramids of supports and sanctions can be elaborated into pyramids of regulatory strategies. Each layer of the pyramid might have many dimensions.⁶¹

At present, section 54 has been left in the hands of companies and CSOs. As discussed further in Part 6, the provision is unique as compliance is not monitored by the state and the Government relies on companies to compete in a ‘race to the top’ to eliminate modern slavery from supply chains. These non-legal monitoring measures make up the bottom of responsive regulation theory’s pyramid structure.⁶² In 2019, the Independent Review recommended that the Government take more substantive enforcement steps, which amount to a gradual approach similar to the responsive regulation pyramid:

Government should make the necessary legislative provisions to strengthen its approach to tackling non-compliance [with section 54 of the Act], adopting a gradual approach: initial warnings, fines (as a percentage of turnover), court summons and directors’ disqualification. Sanctions should be introduced gradually over the next few years so as to give companies time to adapt to changes in the legislative requirements.⁶³

Monitoring is not only about distinguishing the leaders from the laggards. It is an important aspect of the gradual approach recommended by the Independent Review, as it provides the necessary data to inform changes to regulation, enhances societal capabilities for learning and facilitates continuous engagement with the law.

59. Robert Baldwin, Martin Cave and Martin Lodge, *Understanding Regulation: Theory, Strategy and Practice* (OUP 2015) 260-264.

60. *Ibid.*

61. John Braithwaite, ‘The Essence of Responsive Regulation’ (2011) 44 *UBCLR* 475, 490.

62. *Baldwin* (n 58).

63. *The Independent Review* (n 42) para 2.5.2.

5.3. Empirical findings on effectiveness

CSO reports have consistently criticised the effectiveness of the MSA, citing poor quality MSA statements and patchy compliance.⁶⁴ But it is not always clear whether it is the effectiveness of section 54, or the disclosure being criticised. While both types of criticism are important, by blurring the boundaries, the notion of 'effectiveness' loses clarity and as a result, a variety of implied standards and expectations now exist among stakeholders.

Foreshadowed above, a common feature of this study is that effectiveness relates closely to perceptions of accountability. Specifically, whether corporations are adequately held to account by section 54 for their actions or inactions on preventing modern slavery. Empirically, we found that descriptions of effectiveness are imprecise and difficult to define but are nevertheless used interchangeably with 'accountability'.⁶⁵ To address this definitional challenge, we consider in the following parts how CSOs have constructed the meaning of effectiveness, by exploring: (1) the relationship between effectiveness and accountability; (2) the relationship between monitoring and effectiveness; (3) the definitional spectrum of effectiveness; and (4) external sources of effectiveness.

5.3.1. Associated concepts: effectiveness and accountability

Effectiveness is rarely defined in CSO reports. Where the term does appear, it is used as shorthand for the sixth non-mandatory reporting category, recommending that companies set out key performance indicators to independently assess their own progress against self-imposed goals.⁶⁶

Descriptions of effectiveness are generally imprecise. However, in two 2019 reports, we see the use of 'ineffectiveness' indicators as a way of suggesting what 'effective' means.⁶⁷ In one report, a list of reasons for section 54's ineffectiveness was summarised as follows:⁶⁸

[T]he lack of a list of companies to whom the law applies; the lack of a central repository of statements that is managed and updated by the government; the lack of a requirement that companies take action if/when they identify forced labour and human trafficking in their supply chains...

Accountability is increased by the requirement that MSA statements must be signed and approved by a director of the company. The requirement 'creates clear accountability by a senior member of leadership',⁶⁹ and 'aims to encourage senior-level buy-in'.⁷⁰ In these contexts, accountability can encompass social and legal accountability for misrepresentation and breach of directors' duties.

Although effectiveness and accountability convey different concepts, we also observed that in practice, the concepts are often conflated. In the 'FTSE 100 report: Towards Elimination' (2017)

64. The Sancroft-Tussell Report: Eliminating Modern Slavery in Public Procurement (Second edition) (2019) <<https://sancroft.com/wp-content/uploads/2017/11/The-Sancroft-Tussell-Report-1.pdf>> accessed 22 December 2020; Andrew Phillips and Alex Trautrim's 'Agriculture and Modern Slavery Act Reporting: Increasing engagement but poor quality from a high risk sector' (University of Nottingham Rights Lab Report 2019) <<https://www.antislaverycommissioner.co.uk/media/1328/agriculture-and-modern-slavery-act-reporting.pdf>> accessed 22 December 2020; Ergon Associates, 'Modern Slavery Reporting: Is There Evidence of Progress?' (London 2018) <https://ergonassociates.net/wp-content/uploads/2018/10/Ergon_Modern_Slavery_Progress_2018_resource.pdf> accessed 22 December 2020.

65. Ibid.

66. BHRRC 'From Disclosure to Action' (n 41).

67. Focus of Labour Exploitation (FLEX) and the International Corporate Accountability Roundtable (ICAR), 'Full Disclosure: Towards Better Modern Slavery Reporting' (2019); Home Office and HM Government, *2019 UK Annual Report on Modern Slavery* (2019).

68. FLEX and ICAR (Ibid.)

69. BHRRC 'From Disclosure to Action' (n 41).

70. Business and Human Rights Resource Centre, 'At the Starting Line: FTSE 100 & the UK Modern Slavery Act' (2016).

by the Business and Human Rights Resource Centre, it was argued that '[h]olding companies to account is essential to driving up standards, a key step to eradicating modern slavery in supply chains'.⁷¹ If 'eradication' is the desired outcome of the MSA and a hallmark of effectiveness, then accountability is an inextricably linked element. That particular CSO report goes on to say that the MSA would be ineffective if companies are not held to account: '[T]he status quo renders the Act redundant and allows for modern slavery to thrive - the actions of a small number of leading companies will not compensate for the poor performance by the majority.'⁷² Thus, based on these findings, accountability is best viewed as a means of making section 54 more effective in achieving the objectives envisaged by the Government.

5.3.2. Associated concepts: monitoring and effectiveness

Monitoring is a key aspect of effectiveness according to CSOs, as it is both an enforcement strategy and yardstick for measuring improvement. Empirically, monitoring and effectiveness are also closely associated concepts.

We identified two forms of monitoring: (1) businesses monitoring their own supply chains; and (2) external monitoring of MSA statements. As to the first, monitoring is important for businesses as part of their ongoing effort to improve supply chain business practices. One CSO report suggested that businesses should 'monitor [their] progress and carry-out a review and continuous improvement cycle to ensure [they] are addressing all the issues in the most effective way'.⁷³

As to the second form of monitoring, it was apparent from a number of CSO reports that they do not feel they have the necessary resources to fulfil the Government's role to monitor and assess MSA statements. In one study, 'ineffectiveness' was defined with reference to a range of issues which hinder monitoring and make the job of CSOs more difficult.⁷⁴ The study points out that the monitoring work of NGOs is made very difficult by a number of barriers, discussed further in Part 5.2.4, including: the broad language used by the law; the fact that businesses are not legally required to deposit their statements in a central repository; and the lack of clarity on the methods of online publication of statements.

Further, the FLEX report stated:⁷⁵

Members of civil society we interviewed noted that the expectation that civil society fulfil government roles to monitor and assess statements is untenable. Most civil society members who spoke on this topic noted the lack of monetary and personnel resources.

Instead, some have suggested the Government should establish a specialist body to monitor corporate compliance with the MSA:⁷⁶

...[G]overnments that wish to introduce sanctions for non-compliance will have to provide the necessary political infrastructure and funding to carry out appropriate monitoring and evaluation of company statements.

71. Business and Human Rights Resource Centre, 'First Year of FTSE 100 Reports Under the UK Modern Slavery Act: Towards Elimination' (2017) 2.

72. Ibid.

73. Chartered Institute of Procurement & Supply, 'Modern Slavery Act Knowledge Insight' (2016).

74. Leona Vaughn, 'Small Sample Analysis of Modern Slavery Statements in Cocoa and Garment Sectors' (2020) <https://www.academia.edu/44633570/Small_Sample_Analysis_of_Modern_Slavery_Statements_in_Cocoa_and_Garment_Sectors> accessed 2 January 2021.

75. FLEX and ICAR (n 66) 17.

76. Ibid.

Thus, it appears that many CSOs believe that section 54 can only be effective with close monitoring, preferably with government intervention and independent verification.⁷⁷ With apparent dissatisfaction, they point out that the only way to monitor existing MSA statements is through investigation by trade unions and civil society, which is inadequate and ineffective.⁷⁸

5.3.3. Spectrum of 'effectiveness'

According to the 2017 guidance, the Government clarifies that 'legal compliance does not turn on how well the statement is written'.⁷⁹ However, in the reports of CSOs, effectiveness goes beyond basic compliance with section 54 to encourage companies to 'counter the compliance-type approach to reporting',⁸⁰ as compliance with the formal requirements of section 54 achieves very little in the broader objective of transparency and eliminating modern slavery.

Empirically, we identified a 'definitional spectrum' used by CSOs to measure 'effectiveness':

- 1) Effectiveness of the law to achieve compliance with the express requirements of the law (category 1). For example, in the case of section 54, one would determine this kind of effectiveness with reference to whether companies are complying with the reporting requirements.⁸¹
- 2) Effectiveness of the law to result in changes in corporate behaviour (category 2). This may be measured by steps taken internally within companies or sectors, including resources spent on addressing the relevant issues, training provided to employees or suppliers, attention paid to prevention and mitigation by Boards and senior managers, inclusion of relevant issues in contractual requirements, codes of conducts, social audits, engagement of external experts or stakeholders consultations, and so forth.⁸²
- 3) Effectiveness of the law to prevent the unwanted outcome (category 3). This would measure the effectiveness of the law to prevent modern slavery. This kind of evidence is notoriously difficult to obtain because, even where there is sufficient evidence of a decrease in modern slavery incidences, it is rarely possible to without consistent and intentional monitoring through continuous inspections, and deep understanding of the organisations' structure and business model.⁸³

In respect of category 1 effectiveness, empirically, we found that CSOs consistently reported low compliance with the law.⁸⁴ In fact, compliance with the express requirements of section 54 has remained under 50 per cent for the past five years. This result is disappointing, and the MSA compliance rate is far behind other measures, such as compliance with the gender pay gap regulations.

77. Ibid.

78. Ibid; Walk Free Foundation, Australian National University, Business and Human Rights Resource Centre and WikiRate, 'Beyond Compliance in the Hotel Sector - A review of UK Modern Slavery statements' (2019).

79. *The 2020 guidance* (n 18) para 2.7.

80. *CORE Coalition* (n 40) 18.

81. e.g. Ergon Associates, 'Modern Slavery Statements: One Year On' (2017) <https://ergonassociates.net/wp-content/uploads/2016/03/MSA_One_year_on_April_2017.pdf> accessed 22 December 2020.

82. CORE Coalition, Amnesty International UK, Anti-Slavery International, Business and Human Rights Resource Centre, Christian Aid, Environmental Justice Foundation, FLEX, Traidcraft Exchange, Walk Free (an initiative of the Minderoo Foundation) and UNISON, 'Joint Civil Society Responses to UK Government's Modern Slavery Statement' (2020) <<https://media.business-humanrights.org/media/documents/bccfad7ad8f6969f4cacdeec143771a5ddf0df98.pdf>> accessed 22 December 2020.

83. Ethical Trading Initiative, 'Modern Slavery Statement A Framework for Evaluation' (2018) <https://www.ethicaltrade.org/sites/default/files/shared_resources/ETI%20Framework%20MSS%20Evaluation_v8_for%20publication.pdf> accessed 20 December 2020.

84. *BHRRRC 'Towards Elimination'* (n 70).

For category 2 effectiveness, we found that most CSO reports could not evaluate actual changes in corporate behaviour due to a lack of information.⁸⁵ Real change requires year-on-year comparison between statements and direct engagement with companies to understand if changes have taken place. Unfortunately, only one CSO report carried out interviews with businesses,⁸⁶ while only two CSOs drew comparisons between MSA statements.⁸⁷ However, this limitation is not surprising, as comparative and empirical analysis is time-consuming and laborious. Moreover, as the deep dive in Part 7 will demonstrate, changes between statements are often superficial. Unfortunately, without mandatory reporting categories and prescribed requirements to show change, CSOs have little information to rely on and lack the authority and mandate to make additional inquiries.

In relation to category 3 effectiveness, CSO reports could not evaluate how businesses have prevented unwanted outcomes due to a lack of verifiable and evidence-backed information. The FTSE 100 companies' first year of MSA statements 2016 report: *First Year of FTSE 100 Reports under the UK Modern Slavery Act: Towards Elimination?*⁸⁸ found that half of the companies surveyed provided no meaningful information on whether their actions were effective in addressing modern slavery risks. Where information is available, in a number of reports, we identified criticisms of strategies taken, such as audits. In reality, CSOs do not just monitor compliance, they are also piecing together information based on MSA statements in order to determine the effectiveness of preventative strategies.⁸⁹

5.3.4. External sources of effectiveness

Most CSO reports adopted the non-mandatory 2017 guidance as the basic framework for evaluation. In Leona Vaughn's 'Small Sample Analysis of Modern Slavery Statements in Cocoa and Garment Sectors' published in 2020, 40 MSA statements were analysed against the 'expectations within the legislation and guidance for reporting'.⁹⁰ In the University of Nottingham's report and the FTSE 100 report series produced by the Business and Human Rights Resource Centre, the Government guideline is used as the framework for assessment, with the reports quoting direct passages from the Government guide.

CSOs also rely on external standards for 'effectiveness'. From 2018, we saw an increase in references to external standards. For example, Ergon's 2018 report includes a chart of legislative developments, such as the French Duty of Vigilance 2017, the Australian Modern Slavery Act 2018 and the Dutch Child Labour Due Diligence Law 2019.⁹¹ These statutes were all enacted after the MSA and improved on the standards set out in it, with more mandatory requirements and specific obligations. This could suggest a gradual change over time around what is considered 'effective'. The growing global perspective has also led some reports to conclude that the MSA has become less effective over time.

85. FLEX and ICAR (n 66).

86. Ibid.

87. Phillips and Trautrim (n 63).

88. BHRRC 'Towards Elimination' (n 70).

89. Rosanna Cole et al., 'Modern Slavery in Supply Chains: A Secondary Data Analysis of Detection, Remediation and Disclosure' (2018) 12 SCM 3, 81-99; CORE Coalition, 'Modern Slavery Reporting: Weak and Notable Practice' (2017) <<https://respect.international/wp-content/uploads/2017/10/Modern-Slavery-Reporting-Weak-and-Notable-Practice-CORE-2017.pdf>> accessed 20 December 2020.

90. Vaughn (n 73) 4.

91. Ergon Associates, 'Is There Evidence of Progress?' (n 63).

6. Comparative regulatory models for corporate accountability and enforcement

6.1. Summary

- As previously highlighted in Part 5, CSOs are calling for increased accountability under section 54, including legal accountability. However, if the section 54 enforcement model is to be altered to promote accountability, then it is important to examine what alternative models might be appropriate. To this end, Part 7 evaluates a range of legal strategies already utilised in the UK corporate regulatory environment.
- Apart from section 54, all regulatory models used to prevent, address or bring about accountability for corporate harms provide for some role for the state in monitoring, enforcing and implementing them. Examples include (but are not limited to) the Bribery Act 2010, the gender pay gap reporting requirements, and mandatory human rights due diligence regulations, such as the French Duty of Vigilance 2017.
- The role of the state in the other regulatory models ranges from quasi-administrative functions, to investigations and inspections, to civil and criminal sanctions, and more. These mechanisms serve an important role in increasing the effectiveness of the regulatory regime under the spectrum identified in Part 5.3.3.
- Section 54 is unique and distinct from all other regulatory models, as it relies exclusively on civil society pressure for its enforcement. Although it does provide for the possibility of an injunction to be brought by the Secretary of State, this mechanism is weak and, in any case, has never been used.
- Due to its extremely light-touch regulatory approach with little to no state intervention, section 54 is not likely to be as effective as other regulatory models in securing legal compliance, bringing about substantial changes in corporate behaviour and preventing modern slavery (as required under the spectrum of effectiveness).



Earlier in this report, we outlined empirical evidence that called into question the effectiveness of the CSO oversight model. In this part, we compare section 54 with other regulatory models used to prevent, address or bring about accountability for corporate harms, with reference to the 'spectrum of effectiveness' set out in .

The other regulatory models discussed all provide for some role for the state in overseeing, enforcing and implementing the requirements. This role ranges from 'mild' quasi-administrative functions, such as hosting a repository of statements and issuing small fines for gender pay gap reporting requirements, to investigations and inspections, such as with health and safety and environmental requirements, and even winding up a company that is non-compliant with company law requirements. In some models, the role of the state extends to criminal sanctions, such as imprisonment of individuals found guilty of corruption. These interventionist mechanisms play an important role in holding corporations accountable and achieving effectiveness across the spectrum.

In contrast, section 54 is very different from the other models, as it relies exclusively on pressure from civil society for its effectiveness. The provision contains no oversight or enforcement role for the state, except for a possible injunction to be brought by the Secretary of State, leading to a High Court order forcing a company to publish a section 54-compliant statement. However, this avenue has never been pursued. In any event, an order would merely require the company to comply with the reporting requirement, which could include stating that it has taken no steps. No further consequences for non-compliance can arise from a successful injunction order. Thus, with little to no enforcement and intervention, section 54 is not likely to be as effective as other regulatory models in securing legal compliance, bringing about substantial changes in corporate behaviour and preventing modern slavery (as required under the spectrum of effectiveness).

The selected examples of regulatory models are set out in the following table.

Area of law	Example provision	Purpose	Accountability mechanism(s)	Enforcement
Modern slavery reporting regulation	UK Modern Slavery Act 2015 (section 54)	Public Protection	Reputational cost and potential individual liability	Government needs to be informed by civil society, investors and consumers if a business has failed to comply. In the event of non-compliance, injunction can be sought by Secretary of State in the High Court to compel publication of report (not used to date).
Anti-bribery and corruption	UK Bribery Act 2010	Public protection	Individual and corporate criminal liability (strict liability)	Investigation and prosecution by the Serious Fraud Office and the Crown Prosecution Service
Consumer protection law	UK Consumer Protection Act 1987 (Part I)	Consumer protection	Strict liability	Civil litigation by consumers; ombudsman processes available in specific areas
Directors' duties	UK Company Act 2006 (Chapter 2) and Company Directors Disqualification Act 1986	Protection of shareholders	Financial penalty, civil liability, voiding of transactions, winding up of the company	Civil litigation by company or shareholders
Environmental law	UK Environmental law	Public protection	Financial penalty	Conduct Committee of the Financial Reporting Council (for reporting under Company Act); Office for Environmental Protection under proposed UK Environmental Bill?
Gender pay gap reporting requirements	UK Equality Act 2010 (section 78) read with gender pay gap reporting requirements	Public protection	Financial penalty and reputational cost	Equality and Human Rights Commission
Health and safety regulation	UK Health and safety regulation	Consumer protection	Criminal liability, financial penalty	Health and Safety Executive
Mandatory human rights due diligence regulation	French Mandatory human rights due diligence regulation	Public protection	Financial penalty	Civil litigation (under the 2017 French Duty of Vigilance law)

6.2. Gender pay gap reporting requirements

Section 78 of the Equality Act 2010,⁹² read with its gender pay gap reporting regulations,⁹³ requires employers with more than 250 employees⁹⁴ to publish data on what they pay their male and female employees.⁹⁵ The intended result of mandating gender pay gap reporting is ‘to use transparency as a tool for raising awareness, to incentivise employers to analyse the drivers behind their gender pay gap and to explore the extent to which their own policies and practices may have contributed to that gap’.⁹⁶

Insofar as this is a reporting requirement which applies to UK companies of a certain size, it shares similarities with section 54 of the MSA. The information published under section 78 of the Equality Act must be publicly available on the employer’s website,⁹⁷ and employers must publish a written statement alongside the data,⁹⁸ signed by a director.⁹⁹ Employers must also submit the data and written statement to a dedicated Government website.¹⁰⁰ With respect to section 54, a similar Government-based database website has not yet been established, but the 2020 Government commitments include that such a registry will be introduced.

Failure to comply with the gender pay gap reporting requirements constitutes an ‘unlawful act’, for which enforcement powers have been given to the Equality and Human Rights Commission (EHRC).¹⁰¹ The EHRC can give a company notice,¹⁰² require the preparation of an action plan,¹⁰³ enter into an agreement with the company,¹⁰⁴ and/or make an application to court.¹⁰⁵ A court has broad powers to issue fines,¹⁰⁶ orders, or ‘to take such other action as the court ... may specify’.¹⁰⁷ These measures increase the effectiveness of the model under category 1 of the spectrum. Indeed, a study by the Office of the Independent Anti-Slavery Commissioner and University of Nottingham’s Rights Lab found that there was a ‘compliance rate of 87% on day one in the first year of reporting’¹⁰⁸ in terms of the gender pay gap regulations. This compares to a 50 per cent response (existence) rate and a 19 per cent compliance rate within the agricultural sector with the minimum requirements of section 54 of the Modern Slavery Act more than one year after the legislation came into force.

The EHRC also has a gender pay gap enforcement policy, which outlines its processes for seeking enforcement with the legislation.¹⁰⁹ Unlike the MSA, the EHRC’s website names the organisations that failed to report on their gender pay gap, those subject to EHRC investigations, as well as results

92. Equality Act 2010.

93. Equality Act 2010 (Gender Pay Gap Information) Regulations 2017.

94. Ibid reg 1(2) (definition of ‘relevant employer’); Equality Act 2010 s 78(2)(a).

95. Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 reg 2(1). Data must be published within 12 months of the ‘snapshot date’ determined by Parliament, ibid reg 1(2) (definition of ‘snapshot date’), reg 2(2).

96. Ibid [7.3].

97. Ibid reg 15(1).

98. Ibid reg 14(1).

99. Ibid reg 14(2).

100. Ibid reg 15(2).

101. Equal Pay Portal, ‘Gender pay gap reporting: Equality Act 2006 Ch 3’ (*Equal Pay Portal*, 30 July 2019) <<https://www.equalpayportal.co.uk/gender-pay-gap-reporting/>> accessed 3 January 2021

102. *Equality Act* (n 91) s 21.

103. Ibid s 22.

104. Ibid s 23.

105. Ibid s 24.

106. Ibid s 22(9).

107. Ibid s 24(3).

108. *Phillips and Trautrim* (n 63).

109. Equality and Human Rights Commission, ‘Closing the Gap: Enforcing the Gender Pay Gap Regulations’ (23 March 2018) <<https://www.equalityhumanrights.com/en/publication-download/closing-gap-enforcing-gender-pay-gap-regulations>> accessed 20 December 2020.

of those investigations.¹¹⁰ In 2019, the EHRC investigated one organisation for failure to report, four organisations for failure to report on time, and one organisation to determine the accuracy of the reporting, as well as writing to 47 organisations for failing to report.¹¹¹

Unfortunately, however, there is little evidence to date on its effectiveness in regulating corporate conduct (category 2) or substantively narrowing the gender pay gap in practice (category 3).¹¹²

6.3. Product liability and consumer protection

As an example of a product liability model, the UK Consumer Protection Act 1987, Part I implements the strict liability regime introduced by EU Directive 85/374/EEC. The strict liability model provides that people who are injured by defective products can sue for compensation without having to prove that the manufacturer was negligent. It is necessary merely to prove that the product was defective, and that any injury or damage was most likely caused by the product. Although the producer has a number of statutory defences available if a claim is made,¹¹³ the strict liability regime makes it much easier for consumers to seek compensation for defective products, and to pursue civil remedies. Thus, it is highly effective under category 3 of the spectrum.

In addition, there are some reporting bodies for complaints, and many companies offer refunds to resolve concerns, which suggests that the strict liability regime has been effective in changing corporate behaviour to some degree (category 2 of the spectrum). However, except in cases of negligence, consumer protection measures do not generally affect non-consumer-facing companies, such as non-retail suppliers.

6.4. Directors' duties and company law

In company law, the 'general duties' of the Board of Directors are broad and include the duty to act honestly and diligently, promote the success of the company,¹¹⁴ exercise independent judgment,¹¹⁵ and exercise reasonable care, skill and diligence.¹¹⁶ Other obligations include statutory duties around company accounts and reporting.¹¹⁷

Section 172 of the Companies Act 2006 is particularly relevant as it requires directors to 'have regard' to, among other considerations, 'the interests of the company's employees'¹¹⁸ and 'the impact of the company's operations on the community and the environment'.¹¹⁹ Sections 414C(7), 414CA and 414CB of the Companies Act also require a wide range of quoted and other types of companies to include information on human rights and environmental matters in their strategic reports.

110. Equality and Human Rights Commission 'Gender Pay Gap: Our Enforcement Action' (*Equality and Human Rights Commission Website*, 10 December 2019) <<https://www.equalityhumanrights.com/en/pay-gaps/gender-pay-gap-our-enforcement-action>> accessed 20 December 2020.

111. *Ibid.*

112. In 2019, the Treasury Committee conducted an inquiry, the findings of which did not point strongly to the provisions being successful in closing the gender pay gap. Treasury Committee, House of Commons, *The Effectiveness of Gender Pay Gap Reporting Inquiry* (6 June 2019) Q2-Q3, Q11.

113. For example, it is a defence to show that the product is defective in order to comply with domestic or European law; that the defendant did not supply the product; that the defect did not exist at the time the product was put into circulation; among other defences. It is worth noting that liability under the Consumer Protection Act 1987 exists alongside liability in negligence, and in some cases a common law claim may succeed where a claim would not be available under the Act.

114. Companies Act 2006 s 172.

115. *Ibid* s 173.

116. *Ibid* s 174.

117. *Ibid* ss 386-389, 394, 413, 415.

118. *Ibid* s 172 (1)(b).

119. *Ibid* s 172(1)(d).

Litigation is the primary form of enforcement of directors' duties. General directors' duties are owed to the company, not to individual shareholders.¹²⁰ Exceptionally, courts may find that the relationship within the company gives rise to duties owed to shareholders.¹²¹ Accordingly, actions against directors for breach of duties may be brought by: (1) the new board (acting as the company) against a previous board; (2) shareholders through a statutory derivative claim; (3) a majority of shareholders;¹²² and (4) liquidators in the case of insolvency.

A wide variety of consequences may result from a breach of directors' duties. Some examples of statutory consequences include damages or compensation where the company has suffered loss or a director being required to account for gain or indemnity for loss.¹²³ A director may be held liable for committing an offence, such as a failure to declare interest, for which an unlimited fine may be imposed.¹²⁴ In certain cases of misconduct, directors may be disqualified.¹²⁵

The above remedies demonstrate that there are a wide range of creative ways in which the consequences of non-compliance with a corporate duty could be regulated within a statute, which significantly enhances its potential effectiveness under all categories of the spectrum. However, some commentators argue that the duty of care does very little work as an accountability mechanism, due to the lack of private enforcement in the UK.¹²⁶ Nevertheless, other research suggests that British institutional shareholders have been able to monitor directors 'quite effectively',¹²⁷ including because they can call meetings and have power to remove directors.¹²⁸

6.5. Anti-bribery and corruption

Section 7 of the UK Bribery Act 2010 (Bribery Act) provides for a duty on companies to prevent bribery, and creates a criminal offence where a person 'associated' with the company bribes another person.¹²⁹ This is a strict liability, coupled with a defence of 'adequate procedures', which is a due diligence defence. The duty applies to any company incorporated or which carries on a business in the UK. An offence is committed by the UK-linked company irrespective of whether the acts or omissions take place in the UK or elsewhere. In this way, the Bribery Act duty to prevent bribery extends to a significantly larger group of companies than section 54 of the MSA, and is therefore likely to be more effective under the three categories of the spectrum.

The Bribery Act does not provide for remedies for those negatively affected by bribery. Instead, the Serious Fraud Office is the lead agency tasked with investigating and prosecuting cases of overseas corruption. The Crown Prosecution Service also prosecutes bribery offences investigated by the police, committed either overseas or in England and Wales.¹³⁰ Further, the Serious Fraud

120. *Ibid* s 170 (1).

121. See Brenda Hannigan, *Company Law* (5th edn, OUP 2018) 185. See also *Gore-Browne on Companies*, Issue 153 (LexisNexis, December 2019) 18 [44].

122. *Ibid* 18 [47].

123. *Companies Act* (n 113) s 41.

124. *Ibid* s 183.

125. The Company Directors Disqualification Act 1986 sets out the procedures for company directors to be disqualified in certain cases of misconduct. *Company Directors' Disqualification Act 1986*. See also the investigatory procedure in the *Corporations Act 1985* (UK) ('1985 Act'), and LexisNexis, *Gore-Browne on Companies* (n 120) [16].

126. Jennifer G Hill and Matthew Conaglen, 'Directors' Duties and Legal Safe Harbours: A Comparative Analysis' in D Gordon Smith and Andrew S Gold (eds), *Research Handbook on Fiduciary Law* (Edward Elgar Publishing 2018) 305, 324.

127. *Ibid* 350.

128. *Ibid* 351.

129. Bribery Act 2010 ss 1, 6 and 7.

130. Crown Prosecution Service 'Bribery Act 2010: Joint Prosecution Guidance of the Director of the SFO and the Director of Public Prosecutions' (September 2019) <<https://www.cps.gov.uk/legal-guidance/bribery-act-2010-joint-prosecution-guidance-director-serious-fraud-office-and>> The SFO is a specialist prosecuting authority created by the Criminal Justice Act 1987 and it is unique among the UK criminal law enforcement agencies in that it both investigates and prosecutes cases. The Director of the SFO and the Director of Public Prosecutions must give personal consent to a prosecution under the Bribery Act. See Bribery Act 2010 s 10.

Office has urged companies to self-report cases,¹³¹ accompanied by incentives including a reduction in fines and confiscation, and a potential negotiated civil settlement under the Proceeds of Crime Act 2002. However, the Serious Fraud Office has also clarified that there is no presumption that self-reporting will exclude a subsequent criminal prosecution.¹³²

The post-legislative scrutiny of the Bribery Act remarked that the 'creation of an offence of failure by a commercial organisation to prevent bribery was an unprecedented way of enlisting the support of those most susceptible to being involved in the offence and most able to aid in its prevention'.¹³³ This reflects its effectiveness under category 1 of the spectrum. Indeed, to this end, Transparency International UK described it as 'invaluable as a tool to incentivise improvements in corporate behaviour and for prosecutors to hold companies to account within a criminal law framework'.¹³⁴ The UK Criminal Finances Act 2017 has followed this example with the offences of failure to prevent facilitation of UK and foreign tax evasion.

With respect to category 2 of the spectrum, the potential of criminal prosecution or state-based sanctions seems to have a significant impact on corporate behaviour. Previous analysis has compared corporate practices to implement the Bribery Act with steps taken to implement the MSA, which does not have any enforcement for a failure to report.¹³⁵ They found that while companies take governance steps to implement anti-bribery procedures, the MSA does not appear to result in a similar change in company practices.¹³⁶ They ascribe these differences to the Bribery Act model providing an incentive for companies to avoid sanctions by implementing adequate due diligence procedures, while the MSA only imposes reporting requirements with no sanction for non-compliance.¹³⁷

Related to category 3 of the spectrum, comparisons have been made between the effectiveness of regulation aimed at combatting bribery and corruption and modern slavery. Such a comparison is helpful in that there are similarities between the 'unwanted outcomes' which these areas of law try to address. For example, the violations sought to be prevented often take place in other jurisdictions than those where the company is based, and therefore expectations on the company extend beyond the individual corporate enterprise into the supply and value chain. In both areas, the company as an entity is understood to have certain responsibilities in addition to those of the individuals who partook in the illegal activities.

131. Serious Fraud Office, 'Corporate Self Reporting' (9 October 2012) <www.sfo.gov.uk/bribery--corruption/corporate-self-reporting.aspx> accessed 20 December 2020.

132. David Waldron, 'UK SFO director provides guidance on the Bribery Act' (*Morgan Lewis LLP Litigation Lawflash*, 6 November 2013) <https://www.morganlewis.com/pubs/2013/11/lit_ukdirectorprovidesguidanceonbriberyact_06nov13> accessed 3 January 2021. Indeed, in *R v Skansen Interiors* case, which is the first contested section 7 case, the company self-reported and was nevertheless prosecuted and fined. In the *Skansen* case, the company did not have a specific anti-bribery policy. Instead, it sought to rely on ethical conduct policies, arguing that the prohibition against bribes was common sense. *R v Skansen Interiors Limited*, Southwark Crown Court, Case Number: T20170224, 21 February 2018 unreported judgement. See also Hogan Lovells 'Delusions of Adequacy: The Belated Tale of Adequate Procedures' (10 May 2018) <https://www.hoganlovells.com/~/_media/hogan-lovells/pdf/2018/2018_05_10_investigations_white-collar_and_fraud_alert_delusions_of_adequacy_the_belated_tale_of_adequate_procedures.pdf?la=en> accessed 2 January 2021.

133. House of Lords Select Committee on the Bribery Act 2010, *The Bribery Act 2010: Post-Legislative Scrutiny* (HL 2017-19, 303) para 171 <<https://publications.parliament.uk/pa/ld201719/ldselect/ldbriact/303/303.pdf>> accessed 2 January 2021.

134. *Ibid*; Written evidence from Transparency International UK (BRI0003), para 171.

135. Genevieve LeBaron and Andreas Rühmkorf, 'Steering CSR Through Home State Regulation: A Comparison of the Impact of the UK Bribery Act and Modern Slavery Act on Global Supply Chain Governance' (3 May 2017) 8(3).

136. *Ibid* 26.

137. *Ibid*.

6.6. Health and safety regulation

Health and safety regulations provide an interesting comparator for modern slavery laws. They both seek to regulate the way in which companies protect workers from harms or exploitation, and like modern slavery, many occupational health and safety injuries can be severe. However, one key difference is that health and safety regulations usually apply only within the relevant jurisdiction, whereas section 54 of the MSA requires reporting on steps relating to the prevention of modern slavery, which may take place both within and outside of the UK.

Unlike the section 54 model, examples of health and safety regulations provide for a wide range of extensive powers, creatively framed as enforcement mechanisms, and, in some cases, remedies for those affected. These mechanisms significantly increase potential effectiveness under all categories of the spectrum. For example, in the UK, the key enforcement agency is the Health and Safety Executive (HSE). The HSE inspectors have broad and invasive powers, including powers of entry, inspection, removal of property, and the power to require that information be provided.¹³⁸ Failure to comply with statutory duties or notices are criminal offences, punishable by imprisonment and/or fines. Management may be liable where the offence was committed with management's consent or connivance or was attributable to management's neglect. Members of the board have collective and individual responsibility for health and safety.

A 2019 literature review funded by the Danish Working Environment Authority found that there was moderately strong evidence that the introduction of health and safety legislation has an effect on reducing injuries and fatalities (category 3 effectiveness).¹³⁹ There was also moderately strong evidence for the effect of inspections on injuries and compliance with health and safety legislation (category 2 of the spectrum), and low evidence for compensation claims and other outcomes.¹⁴⁰ The authors noted one study that 'found that inspection after an accident reduces the prevalence of accidents the following years with 9% and with 13% of serious accidents with personal injury'.¹⁴¹ The authors also commented that the review indicates that 'general and specific legislation and workplace inspections with or without penalties are indeed effective means to improve the working environment'.¹⁴²

Similarly, the systematic literature review found strong evidence that specific deterrence from inspections with penalties results in a decrease in injuries, and that consultative activity has no effect on injury outcomes (with some exceptions). It found moderate evidence indicating that: a first inspection has the largest impact on compliance rates; specific deterrence from inspections without penalties has no effect on injuries except in particular contexts; and the introduction of health and safety legislation specific to a particular hazard has an effect on long-term injury outcomes.¹⁴³ Thus, the authors commented that, 'given the right context, the introduction of legislation can be effective, as was the case with smoke-free workplace legislation'.¹⁴⁴ However, these meta-studies have also identified a lack of sufficient evidence regarding the effectiveness of health and safety regulation in addressing workplace injuries. Further research into the effectiveness of health and safety regulations would also be informative for the purposes of evaluating the effectiveness of regulatory models to address modern slavery.

138. HSE also has the power to conduct inquiries. Inspectors may issue notices identifying issues and requiring remediation or prohibiting activities (improvement and prohibition notices).

139. Johan Hviid Andersen et al, 'Systematic Literature Review on the Effects of Occupational Safety and Health (OSH) Interventions at the Workplace' (2019) 45(3) *SJWEH* 103, 106 (the journal article is based on a 2016 report of the same title commissioned by the Danish Working Environment Authority).

140. *Ibid* 107.

141. *Ibid*.

142. *Ibid*.

143. *Ibid*.

144. *Ibid*, 104.

6.7. Environmental law

The UK's environmental legislation has developed in an *ad hoc* manner, heavily influenced by EU law. This makes it difficult to analyse as a cohesive body of law.¹⁴⁵ However, environmental reporting often applies to the majority of companies and is not limited to a specific industry or activity. As such, environmental reporting requirements could, for our purposes, be compared and contrasted to the reporting requirements of section 54 of the MSA.

In terms of the Companies Act, listed companies¹⁴⁶ are required to report information on greenhouse gas emissions in their Directors' Reports.¹⁴⁷ These companies are also required to report on environmental matters to the extent that is necessary for an understanding of 'the development, performance or position of the company's business' in their strategic report.¹⁴⁸ In 2019, new regulations came into force imposing new obligations for content of environmental obligations under Directors' Reports and obligations on other large companies and limited liability partnerships to disclose their annual energy use and greenhouse gas emissions (particularly relevant to category 2 of the spectrum).¹⁴⁹

The Conduct Committee of the Financial Reporting Council is the body responsible for ensuring corporate reporting is compliant with the obligations under the Companies Act, as delegated by the Secretary of State.¹⁵⁰ The Committee can apply to the court for a declaration that the company's annual, strategic or directors' report does not comply with the requirements of the Act.¹⁵¹ The court can order the revision of the report,¹⁵² and give directions as to the review of the report and 'such other matters as the court thinks fit'.¹⁵³ Additionally, a director of a company is liable to compensate the company for any loss suffered as a result of 'any untrue or misleading statement' in a report or the omission of something required from the report, if they have the requisite knowledge.¹⁵⁴

Although there are no examples of such enforcement to date, it is possible that these enforcement provisions could also be so applied in relation to section 54 of the MSA to make it more effective, particularly under category 1 of the spectrum. In particular, the requirement that the modern slavery statement needs to be signed by the director has implications which may trigger these regulatory enforcement mechanisms, although section 54 does not require inclusion in the strategic report.

145. On one legal research database, there are more than 200 results for UK legislation with the theme of 'Environment' 'Environmental Legislation', *UK Legislation* (Web Page) <<http://legislation.gov.uk/all?theme=environment>> accessed 2 January 2021.

146. *Companies Act* (n 113) s 385(2).

147. *Companies Act 2006* (Strategic Report and Directors' Report) Regulations 2013 pt 3, ss 15(2) and (3).

148. *Ibid* s 414C(7)(b)(i). As set out above, the same provisions of the Companies Act refer to human rights matters to be included in strategic reports.

149. *Companies* (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018 (UK).

150. *Companies Act* (n 113) s 457.

151. *Ibid* s 457(1).

152. *Ibid* s 457(4).

153. *Ibid* s 457(4)(d).

154. *Ibid* s 463(2)-(3).

6.8. Mandatory human rights due diligence regulation

In the past year or two, there have been several legal developments in the area of mandatory human rights due diligence (mHRDD) regulation. Many of these legal developments are either still in draft or proposed form, or too new to have generated any case law. However, insofar as modern slavery incidences would be covered by any law that requires corporate due diligence for human rights harms, these laws and their regulatory models are informative for our purposes in that they would overlap with the MSA.

The original concept of HRDD was first introduced in the UNGPs. The first and only example to date of a law which introduced a general cross-sectoral human rights due diligence obligation is the 2017 French Duty of Vigilance Law. It imposes an obligation on large French companies to establish, publish and implement a 'vigilance plan'. It also provides for civil remedies for affected persons to seek both preventative and compensatory orders in courts, which are likely to significantly increase the regulatory model's effectiveness under categories 1 and 2 of the spectrum.

The Dutch Child Labour Due Diligence Law was enacted in 2017 and has not taken effect. It only applies to child labour, which has some overlap with modern slavery. It differs from the French Duty of Vigilance Law in that it does not provide for remedies, but instead uses a consumer protection angle. As there is very little evidence of how it is likely to be implemented in practice, it is not particularly useful for our purposes as a comparative example.

Legislative developments in Switzerland are also noteworthy. A popular initiative was launched in 2015 to introduce mandatory human rights and environmental due diligence as a legal standard of care. It would apply to the entire supply chain and would include rights of action for those who have experienced abuses. A counterproposal was introduced in February 2019 which was significantly more limited in scope, applying only to certain commodities and issues. Swiss citizens were called upon to vote on the (Responsible Business Initiative) RBI on 29 November 2020 and it was narrowly rejected. The reporting-centred counterproposal of the National Council without liability rules adopted by the Parliament now automatically enters into force in 2021. As these rules are not yet in force, it is not possible to speculate on their effectiveness.¹⁵⁵

In the UK, a coalition of CSOs have prepared a proposal for a corporate duty to prevent adverse human rights and environmental impacts.¹⁵⁶ This is based on a 2017 recommendation from the UK Joint Committee on Human Rights for a legislation modelled on the UK Bribery Act 2010.¹⁵⁷ The proposal contains a number of elements for inclusion in a new legislation, which will encompass the introduction of a duty to prevent adverse human rights and environmental impacts in companies' activities and in their supply and value chains, and the obligation to develop and implement reasonable and appropriate due diligence procedures in order to prevent such impacts and to publish a forward-looking plan describing said measures.

A study on the possible monitoring and enforcement mechanism of the proposed human rights due diligence law concluded that a dedicated regulatory body could add value to the enforcement of the

155. Business & Human Rights Resource Centre, 'Switzerland: Responsible Business Initiative Rejected at Ballot Box Despite Gaining 50.7% of Popular Vote' (28 November 2020) <<https://www.business-humanrights.org/en/switzerland-ngo-coalition-launches-responsible-business-initiative>> accessed 2 January 2021.

156. CORE, Oxfam, et al. (2020) 'Proposed UK Corporate Duty to Prevent Adverse Human Rights and Environmental Impacts Principal Elements March 2020' <https://corporate-responsibility.org/wp-content/uploads/2020/04/Duty-to-prevent_principal-elements_FINAL.pdf> accessed on 3 January 2021. The Principal Elements Document of March 2020 was supplemented by a second document that sets out the commentary to those principles of September 2020.

157. The Joint Committee on Human Rights, 'Human Rights and Business 2017: Promoting Responsibility and Ensuring Accountability', Sixth Report of Session 2016-17, 5 April 2017 <<https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/443.pdf>> accessed on 3 January 2021; Also based on BIICL study: Peter Hood, Julianne Hughes-Jennett, Irene Pietropaoli and Lise Smith, 'A UK Failure to Prevent Corporate Human Rights Harms' (2020) <<https://www.biicl.org/publications/a-uk-failure-to-prevent-mechanism-for-corporate-human-rights-harms>> accessed on 3 January 2021.

law by increasing the likelihood of UK companies being held accountable for cross-border human rights abuses:

Like the Health and Safety Executive (HSE), Environment Agency (EA) and Equality and Human Rights Commission (EHRC), the BHR regulator will reach across sectors to protect people from harm and regulate a broad spectrum of business entities, ranging from those with high levels of corporate responsibility and human rights engagement, to those who turn a blind eye or wilfully engage in bad practice or criminal activity. Importantly, it will be explicitly concerned with activities in foreign jurisdictions.¹⁵⁸

Insofar as this law would apply to all human rights, it would also cover modern slavery and there would accordingly be some overlap between it and the MSA.

In November 2020, the Government announced that the deforestation due diligence law will be part of the Environment Bill.¹⁵⁹ One of the new measures is the introduction of a law which will require greater due diligence from businesses and make it illegal for UK businesses to use key commodities if they have not been produced in line with local laws protecting forests and other natural ecosystems. On 29 April 2020, the European Commission announced that it will introduce a legislative initiative at EU level for the introduction of mandatory due diligence requirements for human rights and environmental impacts. The announcement followed a study on regulatory options around mandatory due diligence requirements, undertaken for the European Commission Directorate-General for Justice and Consumers by a BIICL-led consortium. The study included views of stakeholders on various regulatory options and sub-options. Again, this study was a preliminary assessment of the potential impact of regulation, which is not yet in place, and as such is informative, but not conclusive for our purposes.

158. Rachel Chambers, Sophie Kemp and Katherine Tyler, 'Report of Research into How a Regulator Could Monitor and Enforce a Proposed UK Human Rights Due Diligence Law' (21 August 2020) <<https://static1.squarespace.com/static/59242ebc03596e804886c7f4/t/5f69fa52ccfcab6a566f1d39/1600780900693/Research+report+1.pdf>> accessed 3 January 2021.

159. Department for Environment, Food & Rural Affairs, 'Press Release: Government Sets Out World-Leading New Measures to Protect Rainforests' (*Gov.uk*, 11 November 2020) <<https://www.gov.uk/government/news/government-sets-out-world-leading-new-measures-to-protect-rainforests#:~:text=rules%20affect%20you-,Government%20sets%20out%20world%20leading%20new%20measures%20to%20protect%20rainforests,laws%20to%20protect%20natural%20areas.>> accessed on 12 January 2021; Department for Business, Energy & Industrial Strategy, Department for Environment Food & Rural Affairs and Foreign, Commonwealth & Development Office, 'Policy Paper: Government Response to the Recommendation of the GRI' <<https://www.gov.uk/government/publications/global-resource-initiative-taskforce-government-response/government-response-to-the-recommendations-of-the-global-resource-initiative>> accessed on 12 January 2021; Roger Harrabin, 'Climate Change Protecting the Rainforest Through Your Shopping Basket' *The BBC* (11 November 2020) <<https://www.bbc.com/news/science-environment-54894962>> accessed on 3 January 2021; Daisy Dunne, 'New UK Law Will Stop Firms Using Products Linked to Illegal Deforestation' *Independent* (11 November 2020) <<https://www.independent.co.uk/environment/illegal-deforestation-uk-law-b1720571.html>> accessed 3 January 2021.

7. Deep dive case studies

7.1. Summary

- **The operation of the MSA reporting requirements and companies' MSA statements need to be understood against the widely varying corporate contexts in which companies operate. Unless these contextual factors are identified and taken into account, there is a danger that any analysis of MSA statements will be superficial.**
- **Although a company's MSA statement may have lengthened and increased in sophistication, these improvements do not necessary translate into increased action or provide further insight into the company's modern slavery supply chain risks and preventive steps. For example, some companies may increase the length of their MSA statements by expressing general commitments and declaring their opposition to modern slavery, but ultimately fail to set out specific, actionable steps or indicators. As such, the commitments expressed in the MSA statements may not be consistent with the company's cost-cutting business practices, such as in the Arcadia case.**
- **The Babcock case illustrates that companies are sometimes strategic about the level of detail they provide on their business operations and supply chains, in order to deflect scrutiny. They may also be reluctant or unwilling to acknowledge the full risks of modern slavery in their supply chains, and therefore take steps to address them.**
- **Overall, the disparity between MSA statements is evident and significant. Reform is necessary for the playing field between businesses to be levelled in relation to the costs and burdens of addressing modern slavery in supply chains.**



Introduction

In this part, we explore statements from two contrasting companies, Arcadia and Babcock International. This analysis goes beyond evaluating the content of the companies' MSA statements, to examine their progression over time and contextualise their statements against the factual background within which they are written. To this end, the part is structured as follows. First, we consider some of the issues that arise for each of the two organisations in turn, before examining what can be learned from comparing their approaches.¹⁶⁰ Second, we question whether the statements reflect the goals of section 54. In other words, to what extent do they provide actionable information for stakeholders, and to what extent do they work to enable CSOs to engage with the organisation to reduce the risks of modern slavery?

7.3. Babcock International

Babcock International Group plc is a UK-based engineering support services company operating in the defence, emergency services and civil nuclear industries. In 2019 its revenues exceeded £5 billion, with more than 35,000 (of which 80 per cent male) employees across Western Europe, Scandinavia, Canada, Australasia, South Africa, South America and Oman.¹⁶¹ The company is dependent on the UK Government for approximately 40 per cent of its business,¹⁶² and 70 per cent of revenue is earned in the UK.¹⁶³

Babcock received disparaging press for its first MSA statement, issued in 2016. A Financial Times article dated 16 October 2016 cited the Business and Human Rights Resource Centre report 'FTSE 100 at the starting line'.¹⁶⁴ This report made several unfavourable comparisons of Babcock's reporting, including comments such as:

*Only 15 (56%) company statements fully and explicitly comply with the minimum requirements of the Act (i.e. they had explicit board approval, were signed by the appropriate person and a link to the statement was found on the company homepage). **Babcock International did not meet any of the requirements.** (Emphasis added).*

Babcock's 2016 MSA statement was also criticised in the CORE report in June 2017.¹⁶⁵ This public 'shaming' of a specific company for the weakness of its MSA statement is relatively rare: it is not easy to find detailed analyses of individual company's reports, and such commentary does not make its way into the mainstream media.

160. The detailed analysis that supports this discussion is presented in a supporting paper: New and Hsin, 'Modern Slavery Statements in Context: Understanding Arcadia and Babcock International' (2021) Working Paper 2021. This paper contains a detailed and structured content analysis of the statements of both companies.

161. Babcock International <<https://www.babcockinternational.com/>> accessed 2 January 2021.

162. Statista, 'Leading Defense Suppliers Dependency on Ministry of Defence (MOD) Business in the United Kingdom (UK) from 2005/06 to 2019/20' (2020) <<https://www.statista.com/statistics/549520/dependency-suppliers-defence-business-governmental/>> accessed 2 January 2021.

163. See Babcock's 2019 Annual Report: Babcock, 'Annual Report and Accounts 2019' <<https://www.babcockinternational.com/wp-content/uploads/2019/06/2019-Annual-Report-Babcock-International-Group-PLC-1.pdf>> accessed 2 January 2021.

164. BHRRC 'At the Starting Line' (n 69).

165. CORE 'Weak and Notable Practice' (n 88).

In the period following this criticism, Babcock progressively made changes to its published MSA statement, and the changes can be summarised as:

- The statements became longer, growing steadily in length from 392 words in 2016 to 1123 words in 2019.
- The statements became compliant with the technical requirements of the MSA, being signed by a Director, and with greater clarity as to which of the many subsidiaries were covered by the statements.
- Progressively more information on the procurement practices of the company has been given, including more details on training and capacity building measures, and on the use of the Supplier Code of Conduct.

The overall finding from this analysis is that of steady progression of the statements towards more comprehensive and serious documents, with a particularly large step forward in 2019. This would, at one level, appear to be *prima facie* evidence for the effectiveness of the overall civil society processes that are assumed to be central to the logic of section 54 of the MSA. However, closer scrutiny reveals a deeper, more complex story, to which we now turn. In particular, it is worth highlighting two particular questions: the question of which operations are covered by the statement, and the presentation of the ideas of risk and virtue.

7.3.1. Coverage and Clarity of Babcock's MSA Statements

One of the frequently discussed weaknesses in the formulation of section 54 of the MSA is that it is completely ambiguous with respect to how companies should interpret 'supply chain'. There is no guidance as to what boundaries should be drawn in terms of how significant a supplier is, what degree of dependency there is between buyers and sellers (in either direction), or how many steps down the chain the analysis should go. This ambiguity is reflected in Babcock's statements, and even in the (much expanded) description in the 2019 version, there is little clarity.

As a starting point, Babcock's statement is interesting in its unconventional use of the word 'tiers'. In supply chain management there is a clear convention of using the label of 'tier one' to refer to direct suppliers (i.e. company with which a buying company has a direct commercial relationship), with 'tier two' referring to those suppliers' suppliers, and so on. However, the Babcock 2019 statement uses what seems to be a non-standard usage in which tier is used as a synonym for 'category' (implicitly, of direct suppliers): Strategic, Preferred, Key and Mandatory. There is, therefore, no description or data at all about the 'chain', although it is widely accepted that the risks of modern slavery may exist in the lower tiers of the supply chain. Given that Babcock is primarily a technology-based company, the procurement of electronic equipment is likely to play a significant role in its operations. Thus, the fact that there is no reference to, for example, the well-documented risks of slavery in the mining of the rare-earth elements involved, is concerning. Similarly, for a company which maintains physical shipyards and military and aviation facilities, it is notable that there is no discussion of problems associated with construction, in which there is often extensive use of contract and migrant labour.

It is also interesting to note which of Babcock's commercial entities it refers to in its statement. The companies specifically named as being part of Babcock all publish independent accounts (consolidated into the group accounts). However, their combined turnover represents just 72 per cent of Babcock International Group's total (and approximately 63 per cent of the employees). Clearly, there are substantial elements of Babcock's overall activity that are apparently not covered by the main MSA statement. Thus, by choosing how to combine or split activities into independent organisations, Babcock can effectively exercise discretion as to which elements fall within the scope of the MSA (and, indeed, other regulatory devices which apply according to scale and location).

Moreover, a key observation here is that, despite the adverse coverage in the *Financial Times*, the company made relatively minor changes to its MSA statement between 2016 and 2017. Despite the narrative presented in the statements, there is very little on the issue mentioned in the company's annual reports. The 2016 Annual Report makes no mention of modern slavery at all, but in 2017 a statement is introduced that echoes some of the words in the MSA statements:

As an international business, we recognise our responsibility for upholding and protecting the human rights of our employees and other individuals with whom we deal in our operations across the world. We welcome the opportunity we have to contribute positively to global efforts to ensure that human rights are understood and observed. We believe that a culture of respect for, and promotion of, human rights is embedded throughout our business and can be demonstrated by our commitment to ethical conduct in everything we do. The Group's Modern Slavery Transparency Statement, which is published annually on our website, details action taken to support the elimination of modern slavery and human trafficking.¹⁶⁶

Interestingly, the 2018 and 2019 Annual Reports use almost exactly the same wording, but with the insertion of the phrase: 'While we continue to believe that our exposure to the risks of human rights abuses and modern slavery is low within our own business and supply chain.'¹⁶⁷

Overall, even the later statements provide little detailed information about what Babcock actually *does* in relation to modern slavery, beyond asserting its opposition to it. For example, there is no detail on, for example, audit or verification processes, or how modern slavery risks are evaluated. Other pages refer to Babcock's participation in JOSCAR,¹⁶⁸ a UK defence-industry initiative for supplier pre-qualification. However, the information available provides no detail on what criteria are applied in this process. The company's annual reports do mention a 'whistle-blowing' system available for employees to report malpractice, but it is notable that this is not made relevant to the discussion of modern slavery and included as an element of the MSA statements.

These characteristics of the statements make sense if, with Babcock, the reader concludes that the risks of slavery occurring in their supply chain is indeed negligible. Given the widespread publicity given to claims (and evidence) of widespread slavery in many industries, this seems a strange assumption. However, thinking about the accountability mechanisms that affect companies such as Babcock may help explain this perspective, and give some insight into how the company's statements have developed over time.

166. Babcock International Group PLC, 'Annual Report and Accounts' (2017) 66 <<https://www.babcockinternational.com/wp-content/uploads/pdf/BABCOCK%20ARA%202017.pdf>> accessed 2 January 2021.

167. *Ibid.*

168. Joint Supply Chain Accreditation Register, JOSCAR for suppliers (2020) <<https://hellios.com/joscar-suppliers/>> accessed 2 January 2021.

7.3.2. Evaluation of Babcock's MSA Statements

Although the 2019 statement is in many ways vastly superior to the 2016 version, the base assumptions remain: that the company is essentially virtuous, and the risk of slavery in the supply chain is low. A potential explanation for these assumptions is that for Babcock's managers, the issue of the probability of there being slavery in their supply chain is dominated by the practical question of the probability of the company suffering harsh reputational damage as a consequence of this being exposed. For this to happen, it may be that someone, such as a journalist or a campaigning NGO, has to deliberately decide that Babcock would be worth scrutiny; but this is relatively unlikely as the company does not serve the public directly and has a very low public profile.

Babcock is also heavily dependent on a single customer (the Government), that is itself constrained by public procurement rules. Babcock's challenge will be to meet a set of minimum 'hygiene-factor' requirements in terms of its compliance with corporate norms (for example, on ethical and social criteria), but once these have been achieved will be competing principally on price. For Babcock's services, there is no niche group of socially or environmentally conscious consumers who are driving the pace of improvement, as there might be for a food or apparel producer. The only external constituency who is likely to exercise substantial power is the investment community, but there the focus is to weigh a large number of environmental, social and governance criteria in a necessarily mechanistic way. Thus, a 'tick box' minimum compliance standard is likely to be the optimal strategy. In fact, in Babcock's case, investors' potential concerns about supply chain slavery risks are likely to be swamped by the more immediate business criticisms.

These factors go some way towards explaining why, for Babcock, the question of modern slavery might feel a relatively small risk: factors specific to the company provide a kind of insulation from the broader civil society pressures envisaged as part of the overall machinery of the MSA. This leaves open the question, though, of why there has been any development at all in the Babcock statements. One potential reason is that there has been a generally increasing awareness in recent years of the significance of companies paying attention to their supply base, and becoming concerned about, for example, the provenance of goods and materials, often under the label of 'supply chain mapping'. To this end, Babcock have at least one dedicated 'supply chain mapping manager'.¹⁶⁹

For defence companies, an area of great concern has been to understand the origin of electronic equipment from the perspective of cybersecurity (as in the recent controversies about Huawei's role in Western telecommunications systems). This has led to an increase in the general professionalism of procurement practice across industries.¹⁷⁰ This general enhanced professionalism in procurement across industries presents a secular trend in which the surface elements of new elements of procurement 'best practice' (about sustainability, modern slavery reporting, cybersecurity) are likely to be adopted as a generic business practices, even if the relevant company's specific engagement with the particular issues is rather weak. Companies often adopt practices by following others so as not to stand out, rather than to achieve a specific purpose.¹⁷¹ In Babcock's case, it could be that these drivers have played a larger part in influencing the development of their MSA statements than a direct response to being criticised in the press.

169. Examples of approaches to supply chain mapping can be found at: Stephen A. Court, The Mapping of Materials Supply Chains in the UK's Power Generation Sector (National Metals Technology Centre (NAMTEC), 2008) <https://namrc.co.uk/wp-content/uploads/2010/08/Court-Mapping_Materials_Supply.pdf> accessed 2 January 2021; UK Nuclear Industry Safety Directors' Forum, 'Good Practice Guide To: Supply Chain Mapping' (March 2017) <https://www.nuclearinst.com/write/MediaUploads/SDF%20documents/SCQ/GPG_Supply_Chain_Mapping_Issue_1_20170412.pdf> accessed 2 January 2021.

170. See e.g. Franco Martinelli, Babcock Group Finance Director, 'Capital Markets Day - presentation transcript', (5 June 2019) 43 <<https://www.babcockinternational.com/wp-content/uploads/2019/06/Babcock-CMD-Transcript-June-2019.pdf>> accessed 3 January 2021.

171. Paul J. DiMaggio and Walter W. Powell, 'The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields' (1983) 48(2) ASR 147-160. See also Mark S. Mizruchi and Lisa C. Fein, 'The Social Construction of Organizational Knowledge: A Study of the Uses of Coercive, Mimetic, and Normative Isomorphism' (1999) 44(4) ASQ 653-683.

7.4. Arcadia Group Limited

Arcadia Group Limited is a privately held UK fashion retailer that trades under a number of well-known high street brand names: Burton Menswear London, Dorothy Perkins, Evans, Miss Selfridge, Outfit, Topman, Topshop and Wallis. The company operates with approximately 2,400 retail outlets (including concessions and franchise stores), employing approximately 17,500 people. Its turnover in 2018 was reported as just over £1.8bn. In November 2020, the company entered administration, and at the time of writing is the subject of possible takeover or even liquidation; it seems unlikely that it will survive in its established form as a major feature of the British high street.¹⁷²

Apparel and textiles are one of the sectors that has received the greatest degree of attention in regard to working practices in global supply chains. The industry is highly competitive and focussed on lowering costs, with the result that clothes in the UK have radically dropped in price. For example, in the UK the cost of clothes in real terms dropped by more than two-thirds in the period 1991 to 2020.¹⁷³ However, in recent years, there has been increasing interest in 'ethical' fashion, in part driven by the emergence of many NGOs and governmental initiatives seeking to address both labour standards and environmental impact.¹⁷⁴

Arcadia has established a reputation for being fiercely focussed on reducing the costs paid to their suppliers. The approach of Arcadia's chairman, Phillip Green, to reducing costs was to push suppliers to the limit.¹⁷⁵ Vivid evidence that this routinely aggressive approach to price negotiation is a common feature of the industry is provided by a 2020 report by Alison Levitt QC on the sourcing practices of Arcadia's online competitor boohoo.¹⁷⁶ Green's companies also featured in multiple stories about poor and exploitative working conditions in its supply chain, which refer to the companies' reputation for squeezing suppliers.¹⁷⁷

7.4.1. Evaluation of Arcadia's MSA Statements

Arcadia's MSA statements differ from Babcock's in several important ways (see Table Two). Its MSA statements, like Babcock's, show a progressive increase in sophistication and content; however, the statements start from the outset as detailed and carefully crafted, showing an engagement with the process that puts the documents into a different category to Babcock's. The statements begin in 2015-16 at a length of 2167 words, more than five times longer than Babcock's. This grows over five years to 3468, not including the other documents referenced and linked in the statements. The statements are characterised by a high degree of sophistication and careful drafting, and they not only give far more information, but also engage in a kind of cumulative conversation with the reader, explaining that in a given year the company is focussing on specific issues. Indeed, it is

172. Independent 'The Collapse of Arcadia Shows How Important Corporate Responsibility Is' (*The Independent*, 30 November 2020) <<https://www.independent.co.uk/voices/editorials/philip-green-arcadia-collapse-coronavirus-business-b1764089.html>> accessed 2 January 2021.

173. Adjusting for general inflation (using the consumer price index), the UK cost of clothing in 2020 dropped to just over 30 per cent of the 1991 level, although this number is very difficult to estimate as the clothing bought shifts with demography, consumer taste and clothing technology, see <<https://www.statista.com/statistics/285120/clothing-and-footwear-cpi-uk>> accessed 2 January 2021.

174. RCGD, 'Seven Organisations Working to Improve Labour Conditions in Fashion Amid the Covid-19 Crisis' (17 April 2020) <<https://www.rcgdglobal.com/2020/04/17/7-ngos-working-to-improve-labour-conditions-in-fashion-amid-the-covid-19-crisis/>> accessed 2 January 2021; Megan Doyle, 'Five Sustainability Groups Reshaping Fashion' (*Ondre*, 15 August 2018) <<https://www.ordre.com/en/news/sustainable-fashion-textiles-ngos-589>> accessed 2 January 2021.

175. Eoin Callan, 'Green: 'Stupid Mistakes' Hit Bhs' (*Financial Times*, 28 September 2006) <<https://www.ft.com/content/9565541c-4ed2-11db-b600-0000779e2340>> accessed 2 January 2021.

176. Alison Levitt, Independent Review into the boohoo Group PLC's Leicester Supply Chain (24 September 2020) <<https://www.boohooplc.com/sites/boohoo-corp/files/final-report-open-version-24.9.2020.pdf>> accessed 2 January 2021.

177. V. Fletcher, 'Topshop Scandal of Cheap Labour' *The Evening Standard* (19 November 2002); C. Newell and R. Winnett, 'Revealed: Topshop Clothes Made with "Slave Labour"' *The Sunday Times* (12 August 2007); Drapers 'BHS Launches Supplier Investigation After Report Showed Knitwear Factory Workers Abused' *Drapers* (14 March 2012); K. Gibbons, 'Underage Workers in Death-Trap Factories Still Linked to UK Labels' *The Times* (6 February 2014); Reuters 'European Chains Profit on Back of Syrian Refugees in Turkish Factories - Watchdog' *Reuters* (3 November 2017); Daily Mirror 'Beyoncé Brand Ivy Park Denies "Slavery" in SL Factory' *Daily Mirror* (18 May 2016).

interesting to note that for Arcadia, the introduction of the MSA statements in 2016 in many cases merely continued (and displaced) the production of lengthy ‘responsibility reports’ generated by the company for many years prior to the MSA.¹⁷⁸ Indeed, the production of these reports was likely stimulated by adverse press coverage of working conditions in Arcadia’s and other companies’ suppliers in 2007.¹⁷⁹

Although clearly designed to meet the requirements of the MSA, they are in fact general reports on supply chain corporate responsibility. There is much more information provided about the company and its supply base, with a clear and logical explanation given for the way the ‘tiers’ are defined.¹⁸⁰ Since 2019, the company has published a list of its first-tier suppliers and shared the information with the Open Apparel Registry (an NGO which manages an open access database of global apparel factories) and this has since been supplemented with partial information on lower tiers. The statements also provide considerable information on the risks of poor labour standards in the chain, and there is extensive discussion of the audit ratings from the company’s ‘ethical audit’ processes. Unlike the Babcock approach, there is explicit recognition of risks, and a realistic assessment of the sometimes-limited extent to which the company might be able to affect them. The Arcadia statements are largely (but not completely) free of the ‘trust us, we’re good people’ trope found in the Babcock statements. Instead, they might be characterised as ‘trust us – see how serious we are with all these programmes and information’. However, it is also the case that the statements contain very little that is specifically about the risks of modern slavery per se, and are more concerned with working conditions in general.

	Babcock	Arcadia
Length (word count)	392 → 1123 (186% growth)	2167 → 3468 (60% growth)
Operations covered	Incomplete, opaque to casual reader	Clear
Description of supply chain	Unclear	Relatively detailed
Summary	Could be characterised as: “We have low risks, but we’re following best practice”	Could be characterised as: “We have complex risks and we’re making progressive improvements”
Protestations of virtue	Could be characterised as: “We are good, and so our actions reflect our goodness”	Could be characterised as: “We are making extensive efforts”
Progression of statements	Stand-alone statements that incrementally add detail	Statements that form some kind of progressive conversation (this year we’re focussing on...)

Table Two: Comparison of MSA statements

178. The company’s Responsibility Reports were produced in their earliest form in 2007. See Corporate Register, ‘Organisation Profile: Arcadia Group Limited’ <<https://www.corporateregister.com/search/profile.cgi?num=18632-welVb8YwvR>> accessed 3 November 2020.

179. Susannah Frankel, ‘The Real Cost of Fashion: a Special Report’ *The Independent* (16 November 2007) <<https://www.independent.co.uk/news/uk/home-news/the-real-cost-of-fashion-a-special-report-400611.html>> accessed 2 January 2021.

180. The statements define four tiers: 1) Factories where primary manufacturing processes take place e.g. cutting, linking, sewing or knitting; 2) Factories where secondary manufacturing processes take place e.g. embroidery, printing or washing; 3) Inputs production e.g. spinning, mills, ginning, dyeing and tanning; 4) Raw materials e.g. cotton, wood and wool.

As a general point, Table Two highlights that there is disparity between the content and quality of Babcock and Arcadia's MSA statements. In fact, there are many MSA statements which disclose even less information than Babcock, or state that the company has taken no steps at all. Thus, in reality, the disparity between MSA statements is significant. These disparities, regardless of degree, highlight that the 'playing field' has still not been levelled within the business environment in terms of combatting modern slavery in supply chains. This is problematic, as one of the objectives of section 54 was to 'drive up standards and bring about positive change through competition',¹⁸¹ as discussed in Part 4.4. Evidently, this objective has not been achieved. Some companies (e.g. Arcadia) are bearing the costs and burdens of addressing modern slavery to a greater extent than other companies (e.g. Babcock).

Nevertheless, there is still an apparent disconnect between the impressive words in Arcadia's statements and what is known about the robustness of the company's actual business practices in relation to driving down prices paid to suppliers. This is not to claim that the MSA statements are themselves dishonest or inaccurate; but it seems unlikely that the progressive and concerned stance portrayed is an entirely complete account of the company's engagement with its supply base.¹⁸² It could be argued that the actions and policies described in the reports are at least in part necessary because of the cutthroat business style at the heart of the company's operations. In other words, modern slavery risks arise not as an aberration but as an inevitable feature of a business approach that involves the exercise of brute commercial force over a vulnerable supply base.¹⁸³ The MSA statements do not address this. This disconnect between articulated and enacted values is well-documented in the literature on corporate social responsibility (euphemistically labelled 'decoupling'),¹⁸⁴ and at best perhaps can be viewed as 'aspirational talk'.¹⁸⁵ In this respect, the MSA statements, as in Cohen's (2011) critique of the company's responsibility reports that preceded them, are 'a good round-up of much that Arcadia is doing in terms of corporate responsibility but the sidestepping of key issues and much data is frustrating'.¹⁸⁶

This leads to the interesting paradox that, despite the effort represented in the documents, it is unlikely that anyone who is knowledgeable about and interested in the company or the industry is likely to be particularly persuaded by the MSA statements that Arcadia has truly addressed the issue of modern slavery. But those not knowledgeable and interested are unlikely to plough through the lengthy and sophisticated documents. In this sense, in exactly the same way as the corporate responsibility reports produced before the MSA, the statements can be seen as having overall symbolic value in that they signal that Arcadia is likely to be no worse than its competitors. The length and sophistication of the statements creates an illusion of transparency, which cannot be verified. This keeps CSOs at arm's length. In Arcadia's case, the effectiveness of the statements is more about providing a reputational benefit for the organisation than actually protecting the human rights of those working in the extended supply chain.

181. *The 2017 Guidance* (n 17).

182. Furthermore, Arcadia's response to the COVID-19 crisis has been widely castigated as payments to suppliers have been withheld and orders cancelled – although this has to be understood in the context of an organisation facing commercial collapse. Jessica Clark, 'Arcadia Cancels Supplier Orders Amid Virus Crisis' *CityAM* (31 March 2020) <<https://www.cityam.com/arcadia-cancels-supplier-orders-amid-coronavirus-crisis/>> accessed 2 January 2021; Annie Kelly, 'Arcadia Group Cancels 'Over £100m' of Orders as Garment Industry Faces Ruin' *The Guardian* (15 April 2020) <<https://www.theguardian.com/global-development/2020/apr/15/arcadia-group-cancels-over-100m-of-orders-as-garment-industry-faces-ruin>> accessed 2 January 2021; Ibrahim Hossain Ovi, 'Payment Still Eludes Bangladeshi Apparel Suppliers of Bestseller, Arcadia, Matalan, New Look' *Dhaka Tribune* (13 November 2020) <<https://www.dhakatribune.com/business/2020/11/13/payment-still-eludes-bangladeshi-apparel-suppliers-of-c-a-bestseller-arcadia-matalan-new-look>> accessed 2 January 2021; Ibrahim Hossain Ovi, 'Bangladeshi Suppliers of Debenhams, Arcadia and JCPenney Are on Pins and Needles Over Their Dues' *Dhaka Tribune* (2 December 2020) <<https://www.dhakatribune.com/business/2020/12/02/no-payment-update-for-bangladeshi-suppliers-of-fallen-western-retail-giants-debenhams-jcpenney-and-arcadia>> accessed 2 January 2021; Caroline Wadham, 'Arcadia Suppliers Offered 20% For In-Transit Orders' *Drapers* (11 December 2020) <<https://www.drapersonline.com/news/arcadia-suppliers-offered-20-for-in-transit-orders>> accessed 2 January 2021.

183. Stephen J. New, 'Modern Slavery and the Supply Chain: The Limits of Corporate Social Responsibility?' (2015) 20(6) *SCMAJ* 697-707; Genevieve LeBaron, *Combatting Modern Slavery: Why Labour Governance is Failing and What We Can Do About It* (Polity 2020).

184. Eva Boxenbaum and Stefan Jonsson, 'Isomorphism, Diffusion, and Decoupling' in Royston Greenwood et al (eds), *The Sage Handbook of Organizational Institutionalism* (Sage 2008) 299-323; Patricia Bromley and Walter W. Powell, 'From Smoke and Mirrors to Walking the Talk: Decoupling in the Contemporary World' (2017) 6(1) *AMA* 483-530.

185. Lars T. Christensen, Mette Morsing and Ole Thyssen, 'CSR as Inspirational Talk' (2013) 20(3) *Organization* 372-393.

186. Elaine Cohen, 'Arcadia Group: Almost transparent' *Corporate Register* (17 January 2011) <<https://www.corporateregister.com/reviews/item/?n=102>> accessed 2 January 2021.

7.5. The links between the publication of MSA statements to monitoring and accountability

A close comparative examination of the MSA statements of two particular companies has yielded some important conclusions for the evaluation of the effectiveness of the section 54 reporting requirements. Evidently, there are a number of limitations on the ability of CSOs to utilise MSA statements¹⁸⁷ (including those analysed above) to hold businesses accountable under section 54, which necessarily has unfortunate consequences for the effectiveness of the provision. In turn, these consequences impact upon how CSOs conceive of the effectiveness of section 54, and result in section 54 being much less effective than other regulatory models (see Part 6).

As discussed above, there are demonstrable improvements in the sophistication of the MSA statements. However, it is not possible to be sure that these improvements in reporting actually correspond to meaningful changes in companies' practices, or to substantial reductions in the risks of modern slavery occurring in supply chains. Going a step further, it is also questionable whether the publication of MSA statements by companies translates to CSOs being able to subject those businesses to scrutiny and effectively hold them accountable for taking steps to combat modern slavery in supply chains.

A first set of issues relates to lack of detail in MSA statements. Stemming from poor reporting and information omissions within MSA statements (as clearly illustrated above in Babcock's MSA statements), CSO reports generally do not capture a sufficiently broad range of businesses subject to section 54 and tend to lack in detail. Indeed, due to lack of detail and transparency in MSA statements like Babcock's, it is generally very difficult for CSOs to verify the accuracy of MSA statements without delving further into the company's affairs. However, CSOs are not legally permitted to request further details from companies to supplement information gaps, nor do they have any powers of investigation.

A second set of issues relates to the lack of ongoing monitoring. Most CSOs do not carry out follow-up monitoring or conduct ongoing engagement with businesses, which means that businesses like Babcock and Arcadia are not being held accountable for acting on the claims in their MSA statements, nor for improving the steps they take or the quality of their MSA reporting. Yet, the discussion above highlights the importance of follow-up monitoring to maintain scrutiny and ensure accountability where links fail, or minimal changes are made year to year.

A third and final set of issues relates to inconsistencies between MSA statements. In addition to the persistent problem of lack of detail, there is no uniform approach to section 54's six 'suggested' reporting areas. As a result, the information provided in one MSA statement often does not have an equivalent in another MSA statement. For example, Arcadia provided relatively detailed descriptions of its supply chain and operations, while Babcock's information on its supply chain and operations was unclear and opaque. Thus, it would be impossible for a CSO to compare the content of the two MSA statements on these points. As a consequence, it is difficult for CSOs to critically evaluate and compare the veracity of MSA statements and steps taken by companies. It is also difficult for CSOs to generate reliable empirical evidence on the behaviour of businesses.

¹⁸⁷ Joanne Meehan, Bruce Pinnington and Demetri Kyriacou, 'Modern Slavery in Asymmetric Supply Chains: Power Plays Through Strategic Ambiguity' (University of Liverpool Management School 2019).

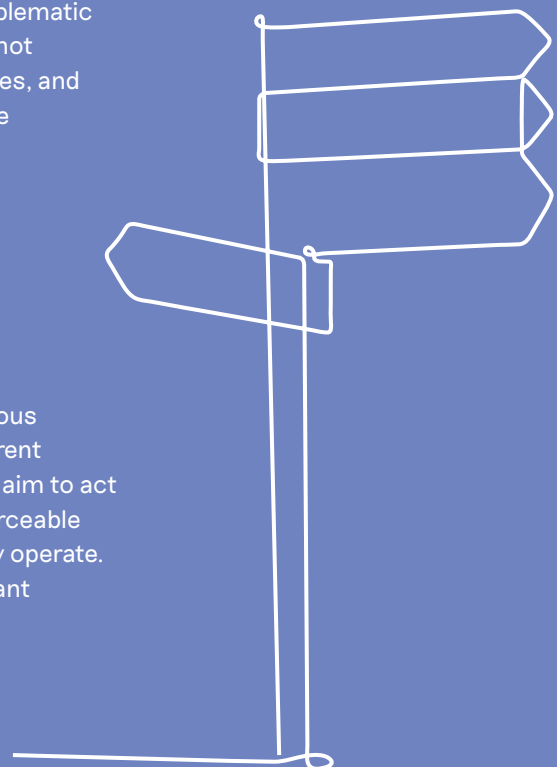
8. Recommendations

This concluding part sets out policy recommendations for key stakeholders which reflect a 'substantive, graduated approach' to enforcement of section 54 of the MSA, as recommended in the Independent Review. In addition, this part sets out recommendations for further research, to build upon the research and policy contributions made by this report. The starting point of this study was to understand how effective section 54 has been to date. What we uncovered through an empirical review of CSO reports is that effectiveness encompasses a range of expectations, from mere compliance to legal accountability.

When section 54 of the MSA was introduced, the express intention was that pressure from civil society, investors and the public would lead companies to address modern slavery in their own operations and supply chains. As a result, no state-led enforcement mechanism was introduced to hold companies accountable. Yet, an important theme of Parts 4 and 6 is that empirically, effectiveness is closely associated with state-based enforcement interventions, such as monitoring, and legal accountability. Many CSOs criticise section 54 for its apparent unenforceability and resulting ineffectiveness, and thus they have consistently sought further legislative change. Notably, they attribute the ineffectiveness of the provision to the legal model, rather than the (lack of) modern slavery measures adopted by companies.

Subsequently, in the Independent Review, it was recommended that enforcement mechanisms for section 54 be strengthened gradually and in a responsive way. The sanctions listed there are reminiscent of sanctions we have seen in other areas of law which regulate corporate activities. The Government's commitment to amend the MSA and section 54 will change how section 54 works in practice. While most businesses regard these new commitments as a 'strengthening' of the MSA, gaps in monitoring and enforcement remain. For example, while the Government is committed to setting up a public registry of companies required to comply, it is not clear how this would be monitored and enforced. As highlighted in Part 7, this is problematic because, without ongoing monitoring, the Government cannot make informed decisions or formulate appropriate responses, and companies are unlikely to make substantive and progressive improvements to their MSA statements over time. In turn, the lack of a monitoring mechanism will continue to undercut section 54's potential for holding companies accountable to the same degree as in other areas of law.

Nevertheless, in the five years since its introduction, section 54 has highlighted modern slavery as a pressing and pervasive problem in international supply chains. CSOs have worked commendably to hold unscrupulous businesses to account and are not responsible for the inherent shortcomings of the legal model. Similarly, businesses that aim to act responsibly are increasingly calling for mandatory and enforceable human rights, in order to level the playing field in which they operate. The findings of this report provide evidence to help all relevant stakeholders recognise that enforcement through purposeful monitoring and accountability is vital to promote continuous improvement.



8.1. Specific recommendations for key stakeholders

8.1.1. Government and lawmakers

The Government's commitment to strengthening section 54 is a positive step towards ensuring section 54's effectiveness. In Part 6 of this report, we identified that the UK's existing legal framework already uses, in other areas of law, all the regulatory models and sanctions proposed by the Independent Review. These range from modest requirements, such as those applicable to the repository for gender pay gap reports, to investigations and fines in health and safety and environmental breaches, to civil remedies and even criminal liability – both individual and corporate – in the Bribery Act. These kinds of laws are therefore not alien to the UK legal system – on the contrary they are used by companies, courts, regulators, employees, legal advisers and other stakeholders on a daily basis to hold companies accountable for complying with the law.

In light of our findings, the Independent Review and the Government's recent commitments to strengthen section 54, we make a number of recommendations to Government and lawmakers designed to improve accountability and the effectiveness of section 54 of the MSA. Specifically, our recommendations relate to the key issues of the proposed Government-run MSA statement registry, the six reporting requirements to be made mandatory and the increased enforcement mechanisms. They are as follows:

Proposed government registry and six mandatory reporting requirements

- Publish on the proposed registry website a list setting out which companies are required to comply with section 54.
- Publish updated guidance in relation to the newly mandatory reporting requirements.
- Provide further guidance to companies of the kind of information they may provide in their MSA statements and how they relate to the effectiveness categories set out in Part 5.3.3, to encourage a fuller picture of the corporate context in which the company is operating (beyond the company's structure, business and supply chains).
- Undertake comprehensive reviews of MSA statements submitted to the Government registry and publish regular reports and benchmarking analysis based on those reviews to provide ongoing insight into compliance and effectiveness.
- Reassess the budget allocated to monitoring and enforcement of section 54, with regard to the costs associated with the gradual approach to enforcement and the need for a state-funded monitoring and enforcement body (see below).
- Establish a single independent state-funded monitoring and enforcement body to: (a) monitor the compliance of MSA statements with the mandatory requirements of section 54; and (b) take on investigatory powers to verify the information contained in MSA statements and request further information from companies.
- The monitoring and enforcement body should undertake its monitoring activities in accordance with a five-year monitoring plan, to be reviewed in the second half of that term. In creating that plan, Government should consider and draw on the model of HSE inspectors (see Part), where appropriate.
- Reassess the powers of the Independent Anti-Slavery Commissioner, and support them to actively engage with the monitoring and enforcement body to oversee section 54 compliance measures.

- Establish a section 54 'hotline' enabling consumers or affected individuals to report allegations and evidence of non-compliance and dishonest or fraudulent reporting to the monitoring and enforcement body.

Financial penalties and other approaches

- Equip the monitoring and enforcement body described above with enforcement powers enabling it to act in accordance with the gradual approach to enforcement and use increased sanctions for non-compliance.
- Impose an unlimited fine or a fine proportionate to annual turnover on companies that fail to comply with section 54.
- Empower the monitoring and enforcement body (or the Home Office), prior to issuing a fine, to: (a) implement a system of warnings, including the issue of an 'unlawful act notice', which would require non-compliant companies to remedy the breach (either failure to publish or failure to meet the requirements of section 54) within 14 days,¹⁸⁸ and (b) apply to the court to make an order under section 54(9).
- Mandate that company directors are liable to compensate their company for any losses suffered as a result of untrue or misleading claims in the company's MSA statement, or the omission of something required in the report (if they have the requisite knowledge).¹⁸⁹
- Engage with public procurement officers to increase awareness of the mechanisms by which modern slavery-related policies can be incorporated into contract conditions and award criteria.
- Consider further opportunities to regulate and incentivise compliance with section 54, such as in public procurement, export credits, business support and trade agreements.

Further opportunities for progress and reform

- Actively engage with CSOs and academic researchers, including the Modern Slavery and Human Rights Policy and Evidence Centre for which this report was produced, to conduct further research on specific techniques of prevention of modern slavery.
- Consider the proposal¹⁹⁰ for a business and human rights regulation that creates a duty to prevent corporate human rights abuses, including a civil remedy for those who have experienced them, and the possible introduction of expert regulators to oversee such regulation.¹⁹¹
- Consider how the above proposal for a corporate human rights law, and other similar developments in European and other jurisdictions where UK companies operate, interact with the provisions and application of section 54 of the MSA.
- Consider establishing a mechanism whereby those who have experienced abuses, including those based outside the UK, can seek compensation and remedies against non-compliant companies, such as a statutory judicial remedy.

188. See Part 4 for a discussion of 'unlawful act notices' in the context of the gender pay gap reporting requirements.

189. See Part 4 for a discussion of this type of measure in the context of environmental protection laws.

190. Business & Human Rights Resource Centre, 'UK: CSOs Call for Mandatory Human Rights Due Diligence Law to Make Multinationals Accountable for Abuses' (April 2019) <<https://www.business-humanrights.org/en/latest-news/uk-csos-call-for-mandatory-human-rights-due-diligence-law-to-make-multinationals-accountable-for-abuses/>> accessed 12 January 2021.

191. *Chambers, Kemp and Tyler* (n 157).

8.1.2. Companies

Genuine efforts by business to identify and mitigate risks are growing, but widespread exploitation and abuse continue to be present in the supply chains of many UK companies. This report has demonstrated that despite the efforts of some companies, disparity between the leaders and laggards on modern slavery reporting remains. The complexity of supply chains and an unequal global playing field, combined with lack of certainty regarding legal expectations, have been noted by companies as key challenges. Moreover, our findings show that the information contained in MSA statements is either not sufficiently detailed, or too complex and impenetrable.

Recently, we have witnessed growing business support for the introduction of mandatory human rights due diligence laws. The reasons cited by companies include the level playing field, legal certainty, and a harmonised and non-negotiable standard which facilitates leverage in the supply chain. These benefits were confirmed in two recent surveys, one for the European Commission¹⁹² and one within the UK context.¹⁹³ UK companies with experience of the Bribery Act have also confirmed that they have indeed experienced these benefits after the introduction of the legislation more than 10 years ago.

Our findings substantiate concerns expressed more recently by leading multinational companies, namely that a lack of enforcement of section 54 leads to an unequal playing field and lack of legal certainty as to what is expected. As the Government's commitments towards gradual enforcement of section 54 take effect, it is assumed that businesses will adjust their MSA statements accordingly. For example, mandatory reporting in terms of the six categories will enable better year-on-year comparisons. Therefore, our recommendations to business are as follows.

Recommendations:

- Ensure that MSA statements provide a realistic reflection of what is occurring within the company in practice, to avoid disparity between the company's public reports and its real-world implementation.
- Facilitate monitoring by Government through, for example, providing information on year-on-year progress with specific references to the categories of effectiveness outlined in Part 5.3.3.
- Engage with CSOs and academic researchers to conduct further research on specific techniques of modern slavery prevention.
- Conduct on-site engagement with suppliers to avoid the 'numbers-only' approach.
- Encourage reporting by procurement officers and collaborate with internal legal counsel/sustainability officers to enhance communication.
- Engage with the regulatory process to make it more effective, whether individually, collectively, formally through consultation or informally, and through participations in studies such as this one and others of the Modern Slavery Policy and Evidence Centre.

192. Lise Smit, Claire Bright, Robert McCorquodale, Matthias Bauer, Hanna Deringer, Daniela Baeza-Breinbauer, Francisca Torres-Cortés, Frank Alleweldt, Senda Kara and Camille Salinier and Héctor Tejero Tobed for the European Commission DG Justice and Consumers, 'Study on due diligence requirements through the supply chain' (24 February 2020) <<https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>> accessed on 12 January 2021.

193. Irene Pietropaoli, Lise Smit, Julianne Hughes-Jennett and Peter Hood, A UK Failure to Prevent Mechanism for Corporate Human Rights Harms (11 February 2020) <<https://www.biiicl.org/publications/a-uk-failure-to-prevent-mechanism-for-corporate-human-rights-harms>>; Lise Smit, Claire Bright, Irene Pietropaoli, Julianne Hughes-Jennett and Peter Hood, "Business Views on Mandatory Human Rights Due Diligence Regulation: A Comparative Analysis of Two Recent Studies", *Business and Human Rights Journal* (2020): 1-9.

8.1.3. CSOs

Since the MSA was enacted in 2015, CSOs have been expected to undertake the mammoth task of monitoring compliance with section 54 and holding businesses accountable. Our review of 24 CSO reports suggests that the reporting requirement, coupled with the use of civil society interventions, has been less effective than hoped. This is not surprising, given the nature and role of civil society, with its campaigning mandates and limited earmarked resources. In order to achieve effectiveness, CSOs should be alleviated of the burden of being the only monitoring mechanism.

If the Government establishes a monitoring and enforcement body, the role of CSOs is likely to shift significantly from merely analysing MSA statements generally, to assisting the state-based body with monitoring and enforcement. New roles for CSOs will range from continued monitoring of practical implementation 'on the ground', facilitating dialogue between the state body, those who have experienced abuses and companies, and assisting those who have experienced modern slavery who seek to bring complaints for remediation and compensation as a result of non-compliance.

Recommendations:

- Collaborate with Government to build the proposed state-run modern slavery registry.
- Work with companies to facilitate knowledge, understand practical risks and challenges, and jointly seek to clarify which regulatory models and other methods are most effective for preventing modern slavery.
- As the Government's commitments to gradual enforcement take shape, including mandatory reporting categories, CSOs should continue to scrutinise and analyse MSA statements to encourage companies to continually improve.
- Continue to monitor MSA statements, including exploring and verifying the potential links or disconnections between published information in MSA reports and the corresponding practical implementation by companies, also found in other sources and through investigative factual enquiries.
- Engage with the regulatory process to make it more effective, whether as individual organisations or collectively.
- Engage with CSOs and academic researchers to conduct further research on specific techniques of prevention, including through participation in studies such as these and others of the Modern Slavery and Human Rights Policy and Evidence Centre.

8.2. Recommendations for further research

The purpose of this report is to provide initial findings on the 'effectiveness' of section 54. We have used empirical evidence to identify how effectiveness is interpreted and the importance of monitoring and accountability to the perceptions of effectiveness. It is important to continue the work we have started. We believe this work can and should continue as the Government introduces its own modern slavery registry and progresses towards strengthening the requirements under section 54 in accordance with the Independent Review. Close cooperation between all key stakeholders is an important aspect of section 54 effectiveness. Each of the three categories of effectiveness are ideal future research areas for the Modern Slavery and Human Rights Policy and Evidence Centre. Specific areas for further research may include:

- The cost and scale of legal mechanisms, considering the impact on public sector organisations too. Impact assessment of enforcement against more than 17,000 organisations in collaboration with the Home Office;
- Research on proportionality of financial penalties;
- Review the definition of non-compliance with section 54;
- Further evidence on the effectiveness of comparative regulatory models, including how new and developing mandatory human rights due diligence laws will interact with the MSA;
- Research on the effectiveness of reporting requirements on non-consumer-facing industries, such as suppliers of component commodities, wholesalers and business-to-business entities;
- Specific techniques and plans to strengthen government monitoring and enforcement under section 54;
- Qualitative research on subscription-only benchmarking services to consider how Government may use existing technology and resources;
- Research into investor and consumer interests to develop strategies to enhance pressure beyond CSOs; and
- Research on Government capacity, capabilities with respect to section 54 monitoring and enforcement.

9. Appendices

9.1. List of abbreviations

BIICL	British Institute of International and Comparative Law
Bribery Act	The UK Bribery Act 2010
BHRRRC	Business & Human Rights Resource Centre
Category 1	First 'definitional spectrum' used by CSOs to measure 'effectiveness' (compliance)
Category 2	Second 'definitional spectrum' used by CSOs to measure 'effectiveness' (behavioural change)
Category 3	Third 'definitional spectrum' used by CSOs to measure 'effectiveness' (eradication and prevention of modern slavery)
CSOs	Civil Society Organisations
CSO reports	Civil Society Organisation reports
EHRC	Equality and Human Rights Commission
Government	Government of the United Kingdom
HRDD	Human rights due diligence
HSE	Health and Safety Executive
mHRDD	Mandatory human rights due diligence
MSA	The Modern Slavery Act 2015
MSA statement	Slavery and human trafficking statement
Independent Review	Independent Review of the Modern Slavery Act
Section 54	Section 54 of the Modern Slavery Act 2015
2017 guidance	Home Office, Transparency in Supply Chains etc.: A Practical Guide (2017)
2020 guidance	Home Office, Transparency in Supply Chains: A Practical Guide (2020)
UNGPs	UN Guiding Principles on Human Rights

9.2. List of CSO reports considered

Andrew Phillips and Alex Trautrimis 'Agriculture and Modern Slavery Act Reporting: Increasing Engagement but Poor Quality from a High Risk Sector' (University of Nottingham Rights Lab Report).

Business & Human Rights Resource Centre, 'At the Starting Line: FTSE 100 & the UK Modern Slavery Act' (2016).

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Chartered Institute of Procurement & Supply, 'Modern Slavery Act Knowledge Insight' (2016).

CORE Coalition, 'Beyond Compliance: Effective Reporting under the Modern Slavery Act' (2016).

CORE Coalition, 'Modern Slavery Reporting: Weak and Notable Practice' (2017).

CORE Coalition, Amnesty International UK, Anti-Slavery International, Business and Human Rights Resource Centre, Christian Aid, Environmental Justice Foundation, FLEX, Traidcraft Exchange, Walk Free (an initiative of the Minderoo Foundation) and UNISON, 'Joint Civil Society Responses to UK Government's Modern Slavery Statement' (2020).

CORE, Oxfam, et al. 'Proposed UK Corporate Duty to Prevent Adverse Human Rights and Environmental Impacts Principal Elements March 2020' (2020).

Ergon Associates, 'Modern Slavery Reporting: Is There Evidence of Progress?' (London 2018).

Ergon Associates, 'Modern Slavery Statements: One Year On' (2017).

Ethical Trading Initiative, 'Modern Slavery Statement: A Framework for Evaluation' (2018).

Focus of Labour Exploitation (FLEX) and the International Corporate Accountability Roundtable (ICAR), 'Full Disclosure: Towards Better Modern Slavery Reporting' (2019).

Global Reporting Initiative (GRI) and Responsible Labour Initiative, 'Advancing modern slavery reporting to meet stakeholder expectations' (2019).

Home Office and HM Government, *2019 UK Annual Report on Modern Slavery* (2019).

Joanne Meehan, Bruce Pinnington and Demetri Kyriacou, 'Modern Slavery in Asymmetric Supply Chains: Power Plays Through Strategic Ambiguity' (University of Liverpool Management School 2019).

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Sancroft-Tussell Report: Eliminating Modern Slavery in Public Procurement (Second edition) (2019).

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The Modern Slavery and Human Rights Policy and Evidence Centre was created by the investment of public funding to enhance understanding of modern slavery and transform the effectiveness of law and policies designed to overcome it. With high quality research at its heart, the Centre brings together academics, policymakers, businesses, civil society, survivors and the public on a scale not seen before in the UK to collaborate on solving this global challenge.

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